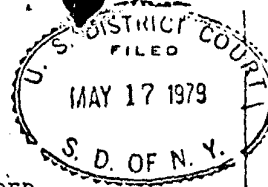


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UDITH CLARK, et al.,

Plaintiffs,

- against -

AMENDED
PROTECTIVE ORDER

UNITED STATES OF AMERICA, et al.,

78 Civ. 2244 (NEL)

Defendants.

Plaintiffs having moved this Court for an order to
protect the discovery process and to further the interests of
justice, and the Court having duly considered the matter, it
ORDERED that:

1. No document identifiable with any plaintiff in
the possession, custody or control of the individual defendants
or Government agency defendants shall be destroyed or obliterated
in any manner pending a final determination of this action,
including any appeals, or upon further order of this Court:

2(a). All documents referred to in, and protected
by this order shall be placed and maintained under supervisory
control of the Court in the physical custody of any person or
agency now in possession of such records who shall be responsible
for the physical integrity of the documents. Any defendant
which has in its possession any of the documents shall be bound
by its terms.

3(a). A copy of this order shall be circulated
to each field office and legal attaches of the Federal Bureau of
Investigation ("FBI") as well as any organizational unit within
the headquarters of the FBI. Additionally, copies of the order
will be circulated to appropriate officials of the Postal Service
and Department of Justice having custody of documents identifiable
to any plaintiff.

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NOT RECORDED

JUN 11 1979

Greenberg/Gray-2895

(b). A copy of this order shall be placed in each volume or section of all FBI main files identifiable as relating to plaintiffs.

(c). The FBI shall prepare an index of all main files referred to in 3(b) above, specifying the serial numbers of documents contained in each file and the location of each file. A copy of the index shall be furnished to ^{for each party} plaintiffs' attorneys and to the Court.

4. Documents protected by this order include (a) all records of any kind and description which have been garnered in connection with past and present investigations and may be garnered in connection with future investigations of any plaintiff, including but not limited to records which are identifiable to plaintiffs though contained in records pertaining to investigations of organizations or individuals with which any plaintiff may have had or may have affiliations, and (b) directives or guidelines governing the conduct of such investigations, including but not limited to the FBI Manual of Instructions and Attorney General Guidelines.

5. All documents compiled in the course of the prosecution or defense of United States v. Gray and United States v. Felt and Miller, 78-000179 (Bryant, C.J.), excluding attorneys' work products, shall be subject to the provisions of paragraphs 1 and 2 of this order. At the conclusion of the prosecutions, all documents covered by this order shall be maintained in the custody of attorneys, or their successors in control of such documents pending final determination of this action.

6. Nothing in this order shall preclude the handling, necessary marking of documents, or necessary alteration of copies of documents in the ordinary course of business or trial preparation by anyone in possession of the documents.

7. It is the intent of the Court that this order shall be broadly construed so as to prevent the destruction of any documents. In the event of any question by ^{any} defendants ^{MSK} concerning the scope and coverage of this order, or any question concerning whether any particular documents come within the designated scope and coverage of this order, the documents in question will not be destroyed or obliterated in whole or part, until either: (a) they are presented to ~~the attorneys for the other parties~~ ^{plaintiffs and plaintiffs' attorneys} for examination and ~~such parties~~ ^{plaintiffs}, by their attorneys, stipulate in writing that the documents may be destroyed or obliterated in whole or part; or (b) the Court, after a hearing duly noticed, exempts the specified documents in question from its order.


8. In addition to specific instructions concerning communication of the contents of this order contained herein, defendants and their attorneys shall communicate the contents of this order forthwith to all appropriate individuals so as to assure the effectuation and compliance with the order by all persons.

9. Within 30 days, defendants shall report to the Court all steps taken so as to assure the effectuation and compliance with this order by all persons.

Dated: New York, New York

~~APRIL 18~~, 1979

May 16


United States District Judge

~~CONFIDENTIAL~~

FBI

b1

TRANSMIT VIA:

☐ Teletype
☐ Facsimile
☐ _____

PRECEDENCE:

☐ Immediate
☐ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☐ UNCLAS.

AIRTEL

Date 4/25/79

TO: DIRECTOR, FBI

ATTN: SA JOSEPH L. PIERNEY
Room 7825 JEHFROM: *mm* LEGAT, OTTAWA (62-548)

UNITED STATES VERSUS
 L. PATRICK GRAY III, ET AL;
DISCOVERY PROCEEDINGS.

PATRICK GRAY

Re Ottawa cable 3/22/79 and Bureau R/S 3/29/79.

ENCLOSURE ATTACHED
ENCLOSURE

3 - Bureau (Enc.2)
 (1 - Foreign Liaison) (Direct)
 1 - Ottawa
 RLM:cae
 (4)

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 FBI AUTOMATIC DECLASSIFICATION GUIDE
 EXEMPTION CODE 25X(6)
 DATE 08-02-2009

15 MAY 1 1979

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Greenberg/Gray-2898

Approved: *378*
34 JUN 5 1979Transmitted _____
(Number)

(Time)

Per _____

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REASON: 25X(1)

Greenberg/Gray 2899

62-118045-171
ENCLOSURE

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UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. O'Brien

DATE: 4/4/79

FROM : L. Tierney

SUBJECT: UNITED STATES vs. W. MARK FELT, 'et al.
DISCOVERY PROCEEDINGS

PURPOSE: To advise of Department's certification of completion of discovery and intention to seek in camera ex parte hearing.

DETAILS: By letters dated 3/30/79, (copies attached) the Department asserted to the Court discovery has been completed.

In the letter filed openly discovery is declared completed by the government and issues remaining minimized, with in camera handling predicted. Additional releases of NSA and CIA information are cited.

Additional CIA information was placed in the Department's vault for defense review.

(S)

b1

(S)

b1

2 ENCLOSURE

9 APR 25 1979

Enclosures (2)
1 - Mr. Adams
1 - Mr. McDermott
1 - Mr. Steel
1 - Mr. Cregar
1 - Mr. Mintz
1 - Mr. O'Brien
1 - Mr. Daly

JLT:mmb (10)

(CONTINUED - OVER)

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53 JUN 13 1979

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Memorandum from Mr. Tierney to Mr. O'Brien
Re: Mark Felt

A second letter, filed under seal, reveals the prosecution's intent to proceed ex parte. The substitution of materials for the foreign source documents is outlined, and the redesignation of domestic intelligence investigations as foreign intelligence operations is mentioned. Both have been ordered produced by the Court.

The foreign source materials are covered by the three affidavits of Paul V. Daly, and the redesignations are to be covered by an affidavit by Mary Lawton, Deputy Assistant Attorney General, which is still under discussion. We have been invited to participate in the discussions on the Lawton affidavit and will advise of any difficulties encountered.

RECOMMENDATION: None. For information.

APPROVED: *[Signature]*
Director *[Signature]*
Assoc. Dir. *[Signature]*
Dep. AD Adm. *[Signature]*
Dep. AD Inv. *[Signature]*
Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. *WOLF*
Laboratory _____
Legal Coun. *[Signature]*
Plan. & Insp. _____
Rec. Mgnt. *[Signature]*
Tech. Servs. _____
Training _____
Public Affs. Off. _____

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UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number
FJM:ams

March 30, 1979

Honorable William B. Bryant
Chief Judge
U.S. District Courthouse of the
District of Columbia
U.S. Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: United States v. Felt, et al (Crim. No. 78-000179)

Dear Judge Bryant,

The government has completed its discovery. Various "house cleaning" details have been resolved with the assistance of defense counsel. Furthermore, after discussion with defense counsel, the government has voluntarily produced, and undertaken to produce, additional documents that will be helpful in forging stipulations for trial. Finally, as to the "foreign involvement" of the Weatherman, in light of the Court's February 22 rulings with respect to the Barker-Martinez defense, government counsel conducted an extensive review of possible ways of lessening redactions. The Federal Bureau of Investigation, the National Security Agency and the Central Intelligence Agency have all released substantial amounts of information that had previously been withheld. For example, five documents containing CIA information which were the subject of redaction

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Greenberg/Gray-2903

complaints by counsel for Mr. Miller have been released in substantially unredact form.

The government anticipates that some dispute will remain as to the adequacy of the government's compliance with discovery and that in camera resolution of those disputes by the Court will be necessary. However, the government reiterates that the discovery phase of this case is over and that defense counsel are fully informed so as to be able to proceed with preparation for trial.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis J. Martin". The signature is stylized with a large, sweeping "F" and "M".

Francis J. Martin
Trial Attorney
Criminal Division

cc: Brian P. Gettings, Esquire
Thomas A. Kennelly, Esquire



OFFICE OF THE PRESIDENT
CHARLES H. STANLEY

5 BELAIR
NORTH LITTLE ROCK, ARK. 72116

OUTSIDE SOURCE

March 15, 1979

The Honorable Griffin B. Bell
The Attorney General
U. S. Department of Justice
Washington, D.C.

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Dear Judge Bell:

In a public proclamation in July, 1978, the Society of Former Special Agents of the FBI, Inc., called for the dismissal of the indictment of L. Patrick Gray, W. Mark Felt, and Edward S. Miller as not being in the best interests of the American citizens or this Nation. Now, with international terrorism and Communist imperialism on the increase, as President of our Society, I am appealing to you to dismiss this prosecution. *[Handwritten signature]*

This action is taken at the insistence of our National Board of Directors, the leaders of our six National Regions, and the more than 7,400 aroused members in our 94 chapters across the country who are irrevocably dedicated to righting this miscarriage of justice. In our personal contacts throughout the country, we are convinced the American public supports us.

REC-114 62-118045-173

We have witnessed major foreign terrorism, including the Entebbe hostage incident, the Munich Olympics massacre, the Vienna OPEC attack, and the wanton murders of Aldo Moro and Hans-Martin Schleyer. Recently, the tragic events in Iran, the assassination of our United States Ambassador in Afghanistan, and the increasing Communist designs in South America spotlight our Nation's vulnerability. Lack of accurate foreign intelligence data is crippling our Nation's decision-making ability in world affairs. Surely, this is not the time to further weaken the intelligence community through the trial of public servants who sought to protect our country. *[Handwritten signature]*

We feel that you - a renowned jurist and the Nation's leading legal authority - must be sorely tried in conscience by the Gray-Felt-Miller cases - a prosecution that rests on a retrospective, retroactive, essentially ex post facto prosecutorial thesis which is anathema to fair play, due process and fundamental justice.

[Handwritten: 1-ENCLOSURE]
Our Society members with expertise in the legal field interpret the "rule of law" as giving the Attorney General the unquestioned discretion to initiate and/or terminate a federal prosecution and believe that precedent exists for you, as Attorney General, to noli prosequi these indictments. *[Handwritten: 4-22-79]*

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Honorable Griffin B. Bell
March 15, 1979
Page Two

As the Court said in United States v. Cox, 324 F.2d 167 (1965):

"It follows, as an incident of the constitutional separation of powers, that the courts are not to interfere with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions."

And again in United States v. Cowan, 524 F.2d 504 (1972), the Court said:

"The Executive remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated."

And note the expression of Judge Leventhal in the Barker-Martinez case (546 F.2d at 972), quoting in part from the Supreme Court's decision in United States v. Dotterweich, 320 U.S. 277, 285 (1943):

"Our system is structured to provide intervention points that serve to mitigate the inequitable impact of general laws while avoiding the massive step of reformulating the law's requirements to meet the special facts of one harsh case. Prosecutors can choose not to prosecute, for they are expected to use their 'good sense. . .conscience and circumspection' to ameliorate the hardships of rules of law."

The FBI officials are being prosecuted for their actions in pursuit of the Weatherman fugitives. Through its own statement of purpose, the Weather Underground is a "Marxist-Leninist Communist revolutionary group." As defined in its statements and publications, the Weather Underground is dedicated to rebellion against the United States, with a documented history of anarchistic attacks on American industry, law enforcement, and the government itself. The international character of the Weather Underground is amply set out in the Report of "The Weather Underground", by the Senate Judiciary Committee in January, 1975. Enclosed is a copy of an analysis of the Weather Underground prepared by professional security experts in our Society. After reviewing these documents, students of terrorism, as well as the American public, will have no difficulty classifying the Weatherman organization as international as distinguished from a domestic group. In fact, Director Webster, in his press conference on December 5th, noted that the Weatherman organization is the "closest thing we have in the United States to international terrorism."

Honorable Griffin B. Bell
March 15, 1979
Page Three

These alleged violations by FBI officials occurred during a period of national crisis. A President, a Senator, and a civil rights leader had been assassinated. An unpopular war was ripping the country. The campuses were in an uproar. The Weatherman was scourging the Nation. Not even the Nation's Capitol was spared -- the Capitol Building and the Pentagon were bombed by the Weatherman. Under this attack on our national security, the FBI responded to the desperate urging of the American people and government to contain this criminal conspiracy, with techniques long accepted by Congress, Attorneys General, and Presidents.

Perhaps these past officials, as well as the FBI men, were mindful of the following admonition of Thomas Jefferson, "A strict observance of the written laws is doubtless one of the highest duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation."

Senator John Glenn, in February, 1979, the anniversary of his earth-orbit flight, echoes the sentiments of the FBI officials when he stated, "Patriotism has been the main motivation of my entire adult life." He said it was time to cease putting down our heroes and start supporting America and the things she stands for.

Assuredly, Gray, Felt, and Miller were dedicated to "saving our country when in danger", and were motivated by patriotism with no thought of personal gain.

In addition, they acted in a national crisis of international terrorist activity upon the demand of their government superiors. At that time, there were no guidelines or directions. In fact, on April 20, 1978 -- the very day that Messrs. Gray, Felt, and Miller were being arraigned in the Federal Courthouse in Washington, D.C., you may recall that you were testifying across town on Capitol Hill in regard to future guidelines and a charter pertaining to the very same techniques for which these men were being charged.

I was particularly impressed and encouraged, Judge, by one of your replies in that testimony on that day. Senator Kennedy asked you whether we would have avoided indicting top echelon people if we had clearly defined procedures outlining permissible as well as prohibited investigative techniques. Your answer, which emphasized one of the basic reasons for this petition to you now, was:

"Definitely. That has worried me from the very first day I became Attorney General. I have wondered about this. If our system that we had in place at the time was so inadequate that the error could be committed, I wonder about it. Negligence could be committed, as distinguished from acting with criminal intent. I have wondered about that."

Honorable Griffin B. Bell
March 15, 1979
Page Four

Recently, the government has requested delays in the trial due to serious complications in granting the defense access to necessary classified material. The prolonged nature of the investigation over the past five years and the refusal to provide the requested data indicate the uncertainty of the prosecution and also attest to national security as the major factor in this case.

As I stated previously, and as demonstrated by actions in the past three years, our Society will neither lessen its resolve nor spare its resources in the all-out effort to vindicate our three associates. To defend active and former FBI Agents charged with violations during the performance of duties in the Weatherman fugitives investigation, our members, current FBI Agents and many concerned citizens throughout the country have, since 1976, contributed more than \$800,000 to our Special Agents Legal Fund, Inc. Since the inception of the fund, we have expended more than \$600,000 for legal representation which the Department of Justice refused to provide for these men. We estimate that legal expenses for the pending Gray-Felt-Miller trial - presumably of six weeks' duration - will amount to approximately \$6,000 per day for a seven-day week, in addition to pre-trial costs of about \$75,000. Accordingly, we are mounting a campaign at this time to collect an additional \$250,000-\$300,000.

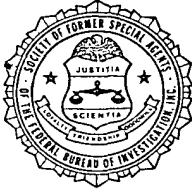
In this period of inflation, not even justice comes at low cost. Nevertheless, this Society is determined to bring our cause to the forum of public opinion and to contend for justice in the American judicial system. Recognizing the authority of the Attorney General as the prime solution to this dilemma, our first recourse - in the name of good conscience, compassion, and common sense - is this request to you to dismiss these charges.

I would sincerely appreciate your personal consideration and response to this petition so that I might make your observations available to our national membership and make further decisions on the course of action by our Society.

Sincerely yours,

CHARLES H. STANLEY
President

Enclosure



OFFICE OF THE PRESIDENT
CHARLES H. STANLEY

5 BELAIR
NORTH LITTLE ROCK, ARK. 72116
March 15, 1979

The President
The White House
Washington, D.C.

Dear Mr. President:

I am well aware of the current problems involving the welfare and security of our great nation and hope and pray for success in your courageous endeavors.

We, as American citizens and former Special Agents of the FBI, feel there is a matter developing which also directly affects the security of our country - the miscarriage of justice in prosecuting L. Patrick Gray, Mark Felt, and Edward Miller for carrying out their duties in pursuit of the Weather Underground fugitives then threatening our Nation's security.

As our President, you, more than anyone else, are aware of the absolute necessity for maintaining the intelligence capabilities of our government at the highest level. The unwarranted attacks on the FBI and other intelligence agencies certainly have affected the continuing receipt of accurate intelligence data so vital to the operations of our government.

While the indictments of Gray, Felt, and Miller already have impaired our intelligence-gathering capabilities, a subsequent trial will be even more damaging to our Nation's welfare.

Realizing your heavy schedule, we still appeal to you to take a few moments to review this unjust and security-weakening action, after which we are certain you will agree that the trial should not take place and the indictment should be dismissed.

Enclosed is a copy of a letter addressed to the Attorney General urging him, as the highest legal officer of our government to use his legal authority to dismiss the indictment of Gray, Felt, and Miller.

Thank you for your consideration.

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Most respectfully yours,

CHARLES H. STANLEY
President

Enclosures

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62-118045-173



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

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C⁵⁶
Brian P. Gettings, Esquire
1400 N. Uhle Street
Courthouse Square
Arlington, Virginia 22216

Re: United States v. Felt *W. Marko*

Dear Mr. Gettings,

The government has had an opportunity to review your proposed "Stipulation on Policies and Practices" and is willing to engage in further discussions to avoid the necessity of detailed proof of uncontested facts which would needlessly burden the conduct of the trial. There are, however, some problems with your proposed "Stipulation on Policies and Practices". These problems may be categorized as (a) clear misstatements of fact; (b) assertions of fact which the government cannot affirmatively agree are true; and (c) characterizations of fact which are either not supportable or simply inappropriate. Specifically, the following problems exist with regard to your proposed stipulation.

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(1) The Brownell memo - You characterize the 1954 (not 1955) memorandum from Attorney General Brownell as delegating to the FBI authority to engage in surreptitious entry for

53 JUN 13 1979

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Greenberg/Gray-2986

electronic and non-electronic purposes. (¶2,3,7,17,23,26)

This is not the case. In early 1954, the Supreme Court, in Irvine v. California 347 U.S. 128 (1954), held that evidence obtained from a trespassory microphone placed in a bedroom was admissible in state court criminal proceedings. In the wake of that decision, Department of Justice policy with respect to microphone surveillances was re-evaluated. Attorney General Brownell then issued his May 20, 1954 directive authorizing the FBI to use microphone surveillances, including microphones that required trespass for installation. This authorization continued in effect until 1965, when Attorney General Katzenbach directed that all microphone surveillances be limited to cases involving the national security and that each microphone surveillance was to be authorized by the Attorney General. Also, you characterize the Brownell memo as dealing with "electronic surveillance"--this is over inclusive. Procedures regarding electronic surveillance in the form of wiretapping have been governed by President Roosevelt's 1940 directive to Attorney General Jackson stating that wiretapping could be used "in such cases as you may approve, after investigation of the need in each case". This practice of Attorney General authorization for FBI wiretapping has remained in effect for nearly forty years. Finally, your characterizations of the Brownell memo as delegating authority to engage in non-electronic surreptitious entries, i.e., bag

jobs, is totally false.

(2) Tenure of Attorney General Kennedy - As you are no doubt aware, Senator Robert Kennedy, at various times, denied that he ever knew of FBI microphone surveillances when he was Attorney General. There are various FBI documents that would support your assertions (§5) that Attorney General Kennedy was aware of and encouraged the use of microphone surveillances in organized crime cases. Contrary to your assertion, these same FBI documents indicate Attorney General Kennedy's view that such microphone surveillances were "all illegal".

(3) Tenure of Attorney General Katzenbach - Certain of your assertions concerning Attorney General Katzenbach would appear to be in error. Attorney General Katzenbach was clearly aware of FBI electronic surveillance in the form of wiretapping--he, of course, gave written case by case approval for such wiretapping. It is also clear that he was aware of FBI microphone surveillances, including microphone surveillances involving trespass, by surreptitious entry or otherwise. In July 1965, all microphone surveillances were discontinued at the direction of Attorney General Katzenbach. In September 1965, microphone surveillances involving trespass, in national security cases only, were reinstituted pursuant to case by case authorization by the Attorney General. The

government is unaware of "more than 100" after-the fact authorizations of microphone surveillances (§6). As noted above, the Attorney General has authorized specific wiretaps for forty years. Also, the Brownell memo never authorized non-electronic surreptitious entries. (§7)

(4) Tenure of Attorney General Ramsey Clark - Your assertion that Attorney General Clark became aware of microphone surveillances and authorized the Department of Justice to defend civil suits arising out of those microphone surveillances (§9) is essentially correct. However, the implication that this included non-electronic "warrantless surreptitious entries", i.e., bag jobs, is false. The Department of Justice has never defended the legality of a bag job, i.e., a warrantless surreptitious entry and physical search of a premises. Also, your assertion that no Attorney General has ever advised the Director that the FBI may not engage in warrantless surreptitious entries (§26) is misleading to the extent that in June 1967 Attorney General Clark specifically refused to authorize a surreptitious entry and search in connection with the foreign intelligence-gathering program referred to in your §10.

(5) Foreign Intelligence Gathering Program (§10) - Your description of the foreign intelligence-gathering program (§10) is somewhat misleading in that it fails to note that

almost all surreptitious entries were directed at premises occupied by aliens. Your recent assertion that "satellite" entries were targeted against American citizens may be accurate, based on information available to you. Government counsel are presently unaware of any such entries, and appropriate files are being reviewed to determine whether such entries occurred. The government does not dispute the bona fides of your assertions and would be willing to consider a stipulation which would put these "satellite" entries into an appropriate perspective. The government does not dispute that Presidents and Attorneys General were aware of this program--although Bureau records may reflect that not all Presidents and Attorneys General knew of it. The government does not dispute that no President or Attorney General ever authorized any of these entries, but notes that the only time such specific authorization was sought--from Attorney General Clark--it was denied.

(6) Klan and other bag jobs - The government agrees that the Bureau conducted bag jobs directed at the Ku Klux Klan (¶11) but is unaware of any evidence that would support your apparent implication that these bag jobs in any way led to the arrest and conviction of the murderers of civil rights workers in Mississippi. The government is not able to stipulate that Attorneys General were aware of any such bag jobs, although they may have been aware of wiretapping (specifically) and microphone surveillances (generally). The government is

not aware of any electronic surveillance or surreptitious entries (electronic or bag job) directed at the Minutemen (§11).

(7) Hoover cut off - Certain aspects of your description of the Hoover cut off on bag jobs are in error. The cut off was formally communicated to the field with respect to the program described in your §10. This was necessary because the field was authorized to conduct surveys (entries) in connection with that program, and formal instructions to cease such surveys were needed (see discovery item 81A & 81B). This was not the case with other bag jobs, which required headquarters approval--and certainly appropriate Domestic Intelligence Division officials were aware of the cut off. The characterization of Mr. Hoover's cut off on bag jobs as an "opinion" is misleading. It was--in the clearest possible terms--a directive. Also, the statement that in cutting off bag jobs Mr. Hoover "was specifically referring" to the program referred to in your §10 is not supported by the evidence.

(8) John Kearney bag jobs (§13) - In the spring of 1968, New York supervisor John Kearney conducted five bag jobs, all with approval from FBI headquarters. Any stipulation should note that these bag jobs did not relate to SDS or Weatherman. The proposition that Kearney was advised that "the Hoover "ban" ...did not apply to 'his kind of cases'" is somewhat at variance with the information available to the government. It may be helpful to explore your basis for this assertion.

(9) Title III - Your assertion that Title III "left open" the issue of the power of the President (not the executive branch) to authorize warrantless electronic surveillance in national security cases (§14) would be better expressed in the terms of the Supreme Court in Keith--that Title III was "neutral" on the subject of the President's powers to authorize warrantless electronic surveillance in National Security matters. Your assertion that the FBI, with the knowledge of the Justice Department, conducted surreptitious entries (feasibility surveys) prior to seeking Departmental, and thereafter judicial, authorization, pursuant to Title III, for microphone surveillances is not supported by any evidence known to the government.

(10) Your §16 - The assertion that prior to Keith (June 19, 1972) the Attorney General authorized electronic surveillance in national security cases without distinction as to whether the case was foreign or domestic is accurate to a point. The documents presented by the FBI to the Attorney General in each case clearly noted whether the justification was predicated on considerations of internal security (domestic) or foreign intelligence. This distinction was always clearly made in affidavits filed by the Attorney General in connection with Alderman hearings.

(11) Huston Plan - Your description of the Huston Plan (§18) is essentially accurate but the government cannot agree that Director Hoover's opposition to the program discussed in

your ¶10 was "for solely practical reasons" or that those same reasons prompted President Nixon to withdraw the Huston Plan. It is clear that unsuccessful efforts were made in the winter of 1970-71 to revive the Huston Plan (¶21). However, the government has no evidence that these efforts failed solely (as you imply) because of Director Hoover's opposition to the program discussed in your ¶10.

(12) Your ¶19 - This paragraph mixes two separate events. The first is an August 1970 incident when, after talking to President Nixon, Director Hoover ordered increased informant coverage in connection with fears of possible terrorist kidnappings of diplomats. The second is an April 1971 incident when, after talking to President Nixon, Director Hoover ordered a "no holds barred" investigation of a multiple police killing in New York (not involving the Weatherman). It should be noted that several technical barriers did exist to such an investigation since the FBI had no jurisdiction to investigate these murders. The government, of course, would stipulate to an accurate statement with respect to these two incidents.

(13) Weatherman bag jobs - The government will stipulate that Weatherman bag jobs began in August 1970 and continued until at least 1974. The government will not stipulate that these bag jobs were conducted "as a result of a direction from

Mr. Hoover". (§20)

(14) Disclosure of bag jobs to Attorney General - It is clear that the Department of Justice, after Mr. Felt's retirement in 1973, was made aware of surreptitious entries--electronic and non-electronic--by the FBI. (§25) For example, the Special Prosecutor was apprised, by Mr. Gray, of the Arab terrorist bag job. With this one exception the Special Prosecutor was not apprised of any other FBI bag jobs. Also, the so-called Ruckelshause inquiry--which continued after he resigned--did not result in the Department being apprised of FBI bag jobs. You, of course, have been apprised in discovery of other disclosures by the FBI to Department of FBI bag jobs, including the disclosures that prompted the investigation that uncovered the bag jobs alleged in the present indictment. The government would again, of course, be willing to stipulate to any reasonable recitation of these facts. Your §25, however, states that after Mr. Felt's retirement Attorneys General were advised that the Director of the FBI on occasion specifically authorized the use of warrantless surreptitious entry. This is correct to the extent that Attorneys General were advised that such activities occurred in the past. It is in error to the extent that it implies that Attorneys General learned of this practice and permitted it to continue.

(15) Minor Inaccuracies - There are a number of relatively minor additional inaccuracies in your proposed stipulation. The meeting with President Eisenhower's cabinet occurred in

1956 (not 1955) and covered a wide range of topics, including those mention in your ¶1. There was obviously use of warrantless microphones surveillances involving trespass during the tenure of Attorney General Rogers. Data available to government counsel would not warrant your characterization (¶4) that this constituted a "massive program". You are correct that in 1965 President Johnson banned electronic surveillance in all cases not involving national security (¶8). However, your characterization of President Johnson's motivations as relating to the Bobby Baker case is speculative and will not be stipulated to by the government. Your discussion of the CIA mail opening program (¶24), in order to be fully accurate, must state that this program involved international mail and not domestic mail. As you are aware, search and seizure law regarding border searches stands on a different footing from search and seizure law in a fully intra-United States situation. See United States v. 12,200 Ft. Reels of Film, 413 U.S. 123 (1972); Almeida-Sanchez v. United States, 413 U.S. 266 (1973); United States v. Martinez-Fuerte, 428 U.S. 543 (1976); and similar cases. Also the declination of prosecution on the CIA mail opening case was in January 1977 (not in 1976). Finally, the first Departmental guidelines relating to warrantless surreptitious entries involving electronic only, were promulgated by the Justice Department in 1974 (not 1976) (¶27). These guidelines (1974 and 1976)

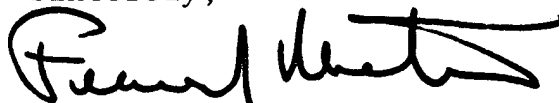
do not permit bag jobs.

Although it appears that your proposed stipulation contains a number of errors, some of major magnitude, it is believed that these errors were made in good faith and that you would be willing to correct them. As to areas where the government cannot confirm information we would be willing to do so if you can provide us with hard evidence and/or direct us to Bureau files that would corroborate these assertions. As noted in several cases above, your proposed stipulation contains various characterization, perhaps best described as editorializations, that are simply inappropriate in any stipulation. Finally, for obvious advocacy reasons, your stipulation centers almost exclusively on policies concerning microphone surveillances involving trespass--whether by surreptitious entry or otherwise--and continually blurs the major distinctions between such activities and surreptitious physical searches of a premises, i.e., bag jobs such as those involved in this case.

In conclusion, the government believes that there is room for further negotiation that could result in a mutually acceptable stipulation as to a number of matters you have raised. In addition, there may be some additional facts that the government would propose as stipulations. In any

event, our negotiations with respect to possible stipulations will be helpful to all parties in hopefully eliminating from trial detailed and extended proof of matters that can be presented to the jury in cogent and effective form by stipulation or other suitable methods. As you have acknowledged, government (or defense) stipulations as to certain facts represent agreements as to accuracy only and do not in any way concede the trial admissability of those facts. Please advise me of any suggestions you may have concerning the resolution of the present disagreements between us, as detailed above, concerning the accuracy of certain aspects of your proposed stipulation.

Sincerely,



Francis J. Martin
Trial Attorney
Criminal Division

cc: Chief Judge Bryant
Alan I. Baron, Esquire
Thomas A. Kennelly, Esquire

UNITED STATES GOVERNMENT

Memorandum

FEDERAL GOVERNMENT

~~SECRET~~

TO : Paul V. ^{AK}Daly
Federal Bureau of Investigation

DATE: March 5, 1979

FROM : Francis J. Martin ^{FJM}
Criminal Division

ALL FBI INFORMATION CONTAINED
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DATE 03-03-2009 BY 65179 dmh/baw/sbs

SUBJECT: Los Angeles Informant

^{C's}
As you are aware, Chief Judge Bryant ruled on February 22, at an in camera hearing that Mr. ^{L. Patrick}Gray, in his efforts to distinguish the [] entry from the Weatherman entries, will not be precluded from stating that he authorized the [] entry on the basis of hard information that there would be an imminent terrorist attack in this country similar to the Munich massacre. Judge Bryant specifically ruled that he would not preclude Mr. Gray from stating that part of his "hard information" included information that this terrorist attack would be []

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[] The information, in fact, was that

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REC-114 62-118001-117
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4 MAR 20 1979

It has been the prosecution's understanding, ab initio, that this information-- [] --could not be publicly revealed because to do so would compromise the Los Angeles informant who provided the information, in-

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53 JUN 13 1979

Buy U.S. Savings Bonds Regularly by Payroll Savings Plan

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cluding likely physical reprisal. Due to the grave impact that refusal to permit public disclosure of this information will have, i.e., certain dismissal of the prosecution of Mr. Gray, it is of obvious importance that all facts and circumstances surrounding this situation be examined in the closest possible detail.

As I understand the situation based on our various discussions, the Los Angeles informant and [redacted] [redacted] met in [redacted] with [redacted] and discussed [redacted] [redacted]. It is unclear to me whether any actual [redacted] took place. However, my clear understanding is that ultimately nothing substantive came of the meeting and that later planned terrorist attacks were totally unrelated. As I understand it, the sensitivity of the information derives from the assertion that if the information is revealed, [redacted] will immediately know that the Los Angeles informant was the source. There are, of course, alternatives to this -- [redacted] [redacted] or their associates could have been an informant or could have been the subject of a technical surveillance. This is not to underestimate the possible danger of public disclosure to the Los Angeles informant, but merely to suggest that the greater the number of possible, if not actual, sources the less the likelihood that the Los Angeles informant would be pinpointed as the source.

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As I understand it the Bureau's information on [] and the L.A. informant is now [] years old.

In the intervening years it is quite possible that the danger of compromise, and of reprisals, that were very real in 1972 may have diminished considerably. Accordingly the Bureau should conduct the following investigation with respect to

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[]:

(1) Determine his present whereabouts and general background information.

(2) Determine whether he is presently associated with any organized violent radical elements, i.e., whether he is presently in a position to effect any reprisal or is even likely to be cognizant of events such as the Gray trial that would prompt him to make the connection with the L.A. informant.

(3) Determine whether he is presently disaffected from organized radical groups, in particular whether he believes that "everyone" was an informant and thus would be less likely to single out the L.A. informant.

(4) Gather any additional data concerning [] that you believe may be pertinent to determining the likelihood that public disclosure of the

[] would jeopardize the L.A. informant. In setting forth the above requests it is

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realized that it may be difficult to gather certain of the information without alerting [] to the Bureau's

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renewed interest in him. However, in view of the importance of this matter, every feasible effort should be made to develop a full current profile on [redacted].

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With respect to the L.A. informant, the Bureau should locate the informant and arrange to interview him. You should arrange to participate personally in the interview. The interview should cover all aspects of the [redacted] [redacted] and the informant's dealings with [redacted] and other militants thereafter. You should develop any information that could possibly bear on the likelihood that [redacted] could identify the source--and be a serious threat to the source--if the [redacted] were revealed.

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Finally, all Bureau information concerning the circumstances of the original [redacted] should be reviewed to determine the possibility of plausible attribution of the information to sources other than the L.A. informant. While in a matter of this importance it would be inappropriate to set a fixed date for completion of your investigation, you should obviously proceed with all deliberate speed.

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Greenberg/Gray-3001

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DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

132

PAGE 1 OF 2			
DATE 3/6/79	CLASSIFICATION UNCLAS	PRECEDENCE PRIORITY	
FM DIR FBI			
TO FBI LOS ANGELES			
BT			
UNCLAS <i>L. Patrick</i>			
U. S. VS. GRAY			
RE YOUR TELETYPES 1/16 AND 2/27/79, CAPTIONED [REDACTED] b2 b7D			
[FORMER].			
THE DEPARTMENT OF JUSTICE, IN CONNECTION WITH CAPTIONED			
MATTER, HAS REQUESTED WE LOCATE AND INTERVIEW [REDACTED] AND			
CONDUCT CERTAIN INVESTIGATION CONCERNING [REDACTED]			
[REDACTED]. IN VIEW OF THE DEPARTMENT'S REQUEST, YOU ARE TO EXPEDI-			
TIOUSLY ASCERTAIN THE CURRENT WHEREABOUTS OF [REDACTED] AS WELL			
AS [REDACTED] THIS INVESTIGATION SHOULD BE AS DISCREET AS			
POSSIBLE. ADVISE FBI HEADQUARTERS AS SOON AS BOTH INDIVIDUALS			
ARE LOCATED, AT WHICH POINT ARRANGEMENTS WILL BE MADE FOR			
INTERVIEW OF [REDACTED].			
DO NOT TYPE MESSAGE BELOW THIS LINE			
APPROVED BY <i>gnd</i>	DRAFTED BY PVD:DMD {8}	DATE 3/6/79	ROOM 6888
		TELE EXT. 3542	

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1 - MR. ADAMS
1 - MR. MCDERMOTT
1 - MR. STEEL
1 - MR. BASSETT

1 - MR. MOORE
1 - MR. MINTZ
1 - MR. DALY

REC-114

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION
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MAR 21 1979

Greenberg/Gray-3002

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FBI/DOJ

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

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2

CONTINUATION SHEET

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Greenberg/Gray-3003

NOTE: BY MEMO MARCH 5, 1979, FRANCIS J. MARTIN TO P. V. DALY, WE WERE REQUESTED TO LOCATE THE LA SOURCE AS WELL AS [REDACTED] [REDACTED] WAS FORMERLY A SUBJECT OF A DOMESTIC SECURITY INVESTIGATION, LA TELETYPE 2/27/79. ADVISED CURRENT WHEREABOUTS WAS UNKNOWN. THEY PREVIOUSLY ADVISED BY THEIR TELETYPE 1/16/79, THAT THE WHEREABOUTS OF [REDACTED] WAS UNKNOWN. WHILE MARTIN'S REQUEST ASKED FOR MORE INFORMATION THAN THE MERE LOCATION OF THESE INDIVIDUALS, IT IS BELIEVED WE SHOULD FIRST LOCATE THE INDIVIDUALS PRIOR TO ISSUING ANY FURTHER INSTRUCTIONS. IT IS BELIEVED ADVANTAGEOUS THAT SOURCE BE INTERVIEWED BY AGENT WHO HANDLED SOURCE IN PAST IN CONJUNCTION WITH A DEPARTMENTAL ATTORNEY. THE ADVANTAGE IS IT ALLOWS MARTIN TO MAKE HIS ON-THE-SPOT ASSESSMENT OF THIS MATTER AND THERE CAN BE NO QUESTION AS TO THE CREDIBILITY OF A BUREAU CONTACT WITH THE SOURCE. SINCE [REDACTED] AND THE SOURCE HAVE HAD A CLOSE RELATIONSHIP IN THE PAST, IT WOULD APPEAR LIKELY THE SOURCE MAY BE IN A POSITION TO FURNISH INFORMATION CONCERNING [REDACTED] CURRENT ACTIVITIES AND THE ANSWERS TO OTHER QUESTIONS MARTIN ASKED IN HIS MEMORANDUM.

APPROVED:

Director *[Signature]*
Assoc. Dir. *[Signature]*
Dep. AD Adm. *[Signature]*
Dep. AD Inv. *[Signature]*

Adm. Serv.

Crim. Inv. *[Signature]*

Ident. *[Signature]*

Intell. *[Signature]*

Laboratory *[Signature]*

Legal Coun.

Plan. & Insp. *[Signature]*

Rec. Mgnt. *[Signature]*

Tech. Servs. *[Signature]*

Training *[Signature]*

Public Affs. Off. *[Signature]*

[Signature]

UNITED STATES GOVERNMENT

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DATE 03-03-2009 BY 65179 DMH/BAW/SBS

Memorandum

FEDERAL GOVERNMENT

TO : Paul Daly

DATE: March 12, 1979

FROM : Frank Martin
DEPT OF JUSTICE

SUBJECT: United States v. L. Patrick Gray, et al

Enclosed is an inventory and a package of FBI documents which were exhibits in grand jury proceedings. Frank Dunham has requested copies of these documents. Please process the documents for eventual transmittal to defense counsel.

*enclosures
returned
to Dept. 3/22/79
JMK*

REC-114 62-118045-177.

11 JUN 12 1979

Greenberg/Gray-3005

4 - Daly - RD.

62-118045



JUN 13 1979

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RECORDS MANAGEMENT DIVISION

P. Daly

Attached Los Angeles teletype advises [redacted] (former) was contacted by Bureau Agents and advised if information he furnished regarding activities of [redacted]

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[redacted] were disclosed, his identity would be compromised. The source stated the disclosure of his identity through disclosure of the information would place he and his family in physical danger.

A copy of the teletype was furnished to Barnett D. Skolnik and Francis J. Martin of the Department. Martin remarked that from the content of the teletype the interview was conducted in accordance with his instructions.

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(Martin conferred with SA [redacted] on 3/12/79 and furnished instructions as to how he wanted the interview conducted.) SA [redacted] was accompanied by ASAC Joseph V. Corless.

Martin requested SA [redacted] return to FBIHQ so that he might confer with him regarding source. This has been arranged.

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1 - Mr. Adams	1 - Mr. Bassett
1 - Mr. McDermott	1 - Mr. Steel
1 - Mr. Moore	1 - Mr. Daly
1 - Mr. Mintz	

pd

APPROVED: *[Signature]*

Director

Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

Adm. Serv.

Crim. Inv.

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FM LOS ANGELES

TO DIRECTOR IMMEDIATE

BT

~~SECRET~~

AIRN: SUPV. PAUL DALEY (HAND CARRY), ROOM 6888 JEH BUILDING

U.S. VS GRAY, ET AL.

L. Patrone
FORMER SOURCE, [REDACTED] WAS CONTACTED ON MARCH 13,

1979 AT 3:40 P.M. BY ASAC JOSEPH V. CORLESS OF THE LOS ANGELES
DIVISION AND SA [REDACTED] OF THE BOSTON DIVISION, AND
PROVIDED WITH THE OFFICIAL IDENTITY OF THE INTERVIEWING AGENTS.

SOURCE WAS ADVISED THAT INTERVIEWING AGENTS WISHED TO DISCUSS
WITH HIM INFORMATION HE HAD FURNISHED TO SA [REDACTED] IN [REDACTED]

[REDACTED] RELATING TO [REDACTED]

[REDACTED]. IN RESPONSE TO
QUESTIONS CONCERNING THE ABOVE, SOURCE VOLUNTARILY PROVIDED THE
FOLLOWING:

SOURCE STATED HE DID NOT EXACTLY RECALL WHEN [REDACTED]

[REDACTED] OBTAINED INFORMATION FROM [REDACTED] ABOUT

Greenberg/Gray-3007

53 JUN 13 1979

14 MAR 79 20 24z

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 03-02-2009

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Dep. AD Inv.	
Asst. Dir.:	
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Director's Sec'y	

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REC-114

62-118045-178

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11 JUN 12 1979

APPROVED:

Director

Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

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62-118045

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[REDACTED]
[REDACTED]. HOWEVER, HE DID RECALL THAT UPON
RECEIPT OF THIS INFORMATION, HE IMMEDIATELY FURNISHED IT TO
SA [REDACTED]. HE ALSO ADVISED THAT [REDACTED]

[REDACTED]
[REDACTED] PROVIDED SOURCE WITH THIS INFOR-
MATION. HOWEVER, HE BELIEVED [REDACTED]

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[REDACTED]
[REDACTED] WHICH HE COULD NOT RECALL
AND AN UNKNOWN REPRESENTATIVE FROM [REDACTED]. SOURCE ADDITIONALLY
STATED HE COULD NOT REMEMBER IF HE WAS TOLD ANYONE ELSE WAS AT
[REDACTED], BUT STATED
"THERE COULD HAVE BEEN MORE."

SOURCE STATED HE DID NOT KNOW HOW MANY PEOPLE [REDACTED]
[REDACTED] HAD DISCUSSED THIS PLAN WITH PRIOR TO SOURCE'S HEARING
ABOUT IT, BUT EXPRESSED OPINION THAT HE MUST HAVE DISCUSSED
IT WITH SOMEONE WHO WAS NOT SUPPOSED TO KNOW [REDACTED]

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[REDACTED]. SOURCE
ADDITIONALLY STATED THAT AS FAR AS HE KNOWS, [REDACTED] DID

PAGE THREE (LA) ~~SECRET~~

NOT DISCUSS THE PLAN WITH ANYONE OTHER THAN [REDACTED]

[REDACTED]
IN CONNECTION WITH [REDACTED], SOURCE
STATED HE DID NOT KNOW WHERE [REDACTED]
NOR HIS IDENTITY. HE DID SPECULATE, HOWEVER, THAT [REDACTED]

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[REDACTED]
RES [REDACTED].

IT WAS SOURCE'S UNDERSTANDING, BASED ON CONVERSATIONS
WITH [REDACTED] THAT [REDACTED]

[REDACTED]. SOURCE DID NOT
KNOW WHO [REDACTED] HAD TOLD, HOW MANY PEOPLE [REDACTED] HAD TOLD, BUT
SOURCE POINTED OUT THAT IT "COULD HAVE BEEN JUST ONE PERSON
WHO SHOULD NOT HAVE KNOWN ABOUT THE PLAN." SOURCE STATED
THAT ALL THE INFORMATION HE GATHERED RELATING TO THIS INCIDENT
WAS INFORMATION FURNISHED DIRECTLY TO HIM BY [REDACTED]
AND NO ONE ELSE.

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SOURCE STATED THAT HE COULD NOT RECALL IF [REDACTED]

[REDACTED] OR IF IT WAS [REDACTED]
[REDACTED].

b7D

SOURCE STATED THAT [REDACTED]

[REDACTED] SOURCE STATED

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[REDACTED] SOURCE MENTIONED ADDI-

TIONALLY THAT HE (SOURCE) NOW ALSO HAS [REDACTED].

WHEN QUERIED AS TO WHETHER OR NOT PUBLIC DISCLOSURE OF THE ABOVE INFORMATION WOULD PUT SOURCE OR ANY MEMBER OF HIS FAMILY IN JEOPARDY, HE REPLIED, "IT WOULD BE DETRIMENTAL TO ME." WHEN ASKED IF IT WOULD PUT SOURCE AND HIS FAMILY IN PHYSICAL DANGER, HE SAID, "SHIT, YEAH." HE WAS THEN ASKED IF ONLY A PORTION OF THIS INFORMATION WAS MADE PUBLIC, AGAIN WITHOUT IDENTIFYING HIM, WHICH COULD HAVE COME FROM OTHER SOURCES OTHER THAN HIMSELF, WOULD HE STILL BE IN JEOPARDY? IN REPLYING TO THIS SOURCE STATED, "IT COULD COME BACK TO ME EASILY IF SOMEONE WANTED TO PUT TWO AND TWO TOGETHER." HE ALSO STATED THAT "THERE ARE PLENTY OF PEOPLE WHO WOULD STILL HOLD IT AGAINST ME, INCLUDING [REDACTED]."

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SOURCE STATED THAT "STREET AND REVOLUTIONARY PRINCIPLES WOULD

REQUIRE THAT I BE EXECUTED" AND HE FELT "THIS WOULD HAPPEN."

SOURCE REMINDED SA [] THAT UPON INITIAL CONTACT BY THE FBI IT WAS AGREED THAT HIS RELATIONSHIP WITH THE FBI WOULD REMAIN CONFIDENTIAL IN THAT HIS LIFE AND THAT OF HIS FAMILY WOULD BE IN JEOPARDY IF RELATIONSHIP REVEALED. SOURCE STATED HIS FEELINGS WERE STILL THE SAME AND "NOTHING IS CHANGED." HE RE-EMPHASIZED THAT DISCLOSURE OF THE ABOVE INFORMATION COULD REVEAL HIS IDENTITY AS THE SOURCE.

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SOURCE WAS THEN ASKED IF HE FELT A SIMPLE STATEMENT APPEARING IN PUBLIC TO THE EFFECT THAT []

[] WOULD BE DETRIMENTAL TO HIM. SOURCE REPLIED, "[]

[]" WHEN ASKED TO FURTHER EXPLAIN, SOURCE STATED THAT "[]

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[]" SOURCE WENT ON TO SAY THAT []

[]" "IF []

[] FOUND OUT, HE'D KILL ME []

[]"

INTERVIEW CONCLUDED AT 4:20 P.M. AND UPON EXITING RESIDENCE, SOURCE STATED TO SA [] "IT'S A GOOD THING YOU CAME BECAUSE I WON'T TALK TO ANYONE ELSE."

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IT IS NOTEWORTHY THAT AT NO TIME DURING THIS INTERVIEW WAS ANY MENTION MADE OF THE GRAY, MILLER, FELT TRIAL.

~~C AND E 6370, REASON (2), DRD MARCH 14, 1999~~

BT

Greenberg/Gray-3011



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number ~~FEDERAL GOVERNMENT~~

March 15, 1979

BDS:ams

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DATE 03-02-2009 BY 65179 dmh/baw/sbs

Honorable William B. Bryant
Chief Judge
U.S. District Court for the
District of Columbia
U.S. Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: United States v. Gray, et al

L. Patrick

Dear Judge Bryant,

As the government has stated previously, certain of the Court's recent rulings, which would allow defendant Gray at trial to make public certain data which the Court has, over the government's objection, found to be relevant to the core evidentiary disputes in the case, have now put the case against defendant Gray in a posture different from that of the case against defendants Felt and Miller. Accordingly, we earlier advised the Court that it was highly probable that severance of defendant Gray would be necessary.

REC-114

62-118045-179

JUN 12 1979

The issue of possible severance of defendant Gray has now been fully reviewed within the Department of Justice and a final determination has now been reached that, in the government's judgment, such a severance is now required in the interests of justice. While the Department of Justice is

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Greenberg/Gray-3012

53 JUN 13 1979

actively pursuing both the factual inquiries and ultimate policy determinations that are required by the Court's recent rulings, it is clear that the resolutions which the government is likely ultimately to propose to the Court would be more fair in the context of a trial of defendant Gray alone than in the context of a joint trial. Accordingly, we suggest that the Court now reconsider and grant, in light of the Court's recent rulings, defendant Gray's earlier motion for severance.

With respect to trial of defendants Felt and Miller, we will continue to work as expeditiously as possible to complete the pre-trial matters required by the Court's recent ruling as to the availability to them of a Barker-Martinez defense. Our objective is to proceed to trial of defendants Felt and Miller at the earliest possible date, with trial of defendant Gray to be scheduled thereafter.

Sincerely,

Barnet D. Skolnik / pea RTM
Barnet D. Skolnik
Special Assistant U.S. Attorney
for the District of Columbia

cc: Alan I. Baron, Esquire
Brian P. Gettings, Esquire
Thomas A. Kennelly, Esquire

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : Mr. Bassett *HMB*

FROM : P. V. Daly *pd*

SUBJECT: UNITED STATES v. GRAY ET AL
L. Patterson

DATE: 3/19/79

PURPOSE:

The purpose of this memorandum is to summarize the status of this matter as it relates to discovery.

SYNOPSIS:

Chief Judge William Bryant ordered the Government to complete discovery in this matter by 3/30/79 during open court hearing on 3/15/79. With the exception of foreign government materials, the discovery as to FBI materials will be completed by that time. Alternative methods of furnishing the foreign government material being considered. The problem presented by the Los Angeles source has not been resolved.

RECOMMENDATION:

That on completion of discovery, we submit a memorandum, in writing, to the Department stating that fact along with our understandings as to the Department's instructions concerning discovery.

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DATE 03-02-2009 BY 65179 dmh/baw/sbs

APPROVED: *[Signature]*

Director *[Signature]*

Assoc. Dir. *[Signature]*

Dep. AD Adm. *[Signature]*

Dep. AD Inv. *[Signature]*

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Crim. Inv. _____

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Rec. Mgnt. *[Signature]*

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- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Cregar
- 1 - Mr. Mintz

PVD:jam *[Signature]*
(9)

Greenberg/Gray-3014

REC-114

- 1 - Mr. Moore
- 1 - Mr. A. Steel
- 1 - Mr. Bassett
- 1 - Mr. Daly

11 JUN 12 1979

(CONTINUED-OVER) *[Signature]*



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53 JUN 13 1979

62-118045

P. V. Daly to Mr. Bassett Memorandum
Re: United States v. Gray Et Al

DETAILS:

On 3/15/79, Chief Judge William Bryant ordered the Government to complete the discovery ordered by him in August 1978 by 3/30/79 or he would entertain a motion to dismiss the case. As it currently stands, we have completed all discovery with the exception of information relating to foreign direction, collaboration or influence as it applies to the Weatherman. These documents can be divided into two categories: (1) those that originate from a foreign government, and (2) those that originate from a sensitive Bureau source or method. As to foreign government material, the Department has taken the position that this material cannot be released to the defense and have so advised the court. In an effort to satisfy the court and the defense, at the request of the Department, we isolated the documents of this nature which are 15 in number. We then reviewed pertinent Weatherman files to locate the information contained in these documents in other documents, but not originating with a foreign government. This review was generally successful, and Departmental attorneys and paralegals reviewed that material on 3/12,13, and 14/79. It is the Department's intent to appear in camera ex parte with the Judge, show him the foreign government information, as well as the same information from a nonforeign government. By this, they hope to persuade the court to accept the substitute information for discovery purposes and not release the foreign government information.

Judge Bryant's discovery order is actually wider in scope as it applies to foreign government information than the material being discovered. The order calls for the production of material relating to foreign travel. Departmental Attorney Francis J. Martin's instructions to the Bureau were to disregard the travel information as furnished by foreign governments unless it related to foreign connection, direction or influence. Martin believed this was consistent with Judge Bryant's ruling that the Barker-Martinez defense was available to the Miller and Felt.

Should the Judge not accept this interpretation and demand production of all travel information, the amount of documents would increase from 15 to approximately 500. This,

P. V. Daly to Mr. Bassett Memorandum
Re: United States v. Gray Et Al

in Martin's view, would be an insurmountable obstacle since, in many instances, we cannot find alternative sources of information which might satisfy the court.

As to Central Intelligence Agency (CIA) and National Security Agency (NSA) material in our files which is subject to discovery, the Department is negotiating directly with those agencies as to production of the material. CIA has placed all but 29 of their discoverable documents in the Department of Justice vault without redaction for defense review. NSA has submitted paraphrased versions of documents for defense review in those instances where it is not possible to redact the document. It is CIA and NSA's positions that this is for discovery purposes and that disclosure for trial is another question entirely.

With regard to the informant problem raised in connection with the prosecution of Gray, Martin interviewed SA [REDACTED] on 3/15/79 concerning the contact with [REDACTED] (FORMER). Cleary amplified on the contents of the Los Angeles teletype of 3/14/79, which set forth the results of his and ASAC Joseph V. Corless's contact with that source. Generally, he identified and described the backgrounds of the various people who had knowledge of the [REDACTED]

Martin, subsequent to the interview, requested a memorandum be submitted to him setting forth details regarding our contact with the source.

In light of the severance of Gray from Miller and Felt and trial of Gray to follow Miller, the resolution of the source question is less pressing at this time.

157

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

b6
b7c

PAGE 1 OF 3

DATE

3/20/79

CLASSIFICATION

~~CONFIDENTIAL~~

PRECEDENCE

IMMEDIATE

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

START HERE

FM DIRECTOR, FBI

TO LEGAL ATTACHE, OTTAWA {IMMEDIATE}

LEGAL ATTACHE, MEXICO CITY {IMMEDIATE}

14 LEGAL ATTACHE, HONG KONG {IMMEDIATE}

LEGAL ATTACHE, TOKYO {IMMEDIATE}

12 BT

~~CONFIDENTIAL~~

10 UNITED STATES VERSUS L. PATRICK GRAY III, ET AL; DISCOVERY
PROCEEDINGS

8 ON MARCH ONE FIVE, LAST, U.S. DISTRICT COURT JUDGE ORDERED
GOVERNMENT TO COMPLETE DISCOVERY PROCEEDINGS BY MARCH THREE
6 ZERO, NEXT. PROSECUTION IS PREPARING TO PRESENT TO COURT
PAREN EXPARTE AND IN CAMERA PAREN AT THAT TIME ALL MATERIALS
4 ORDERED PRODUCED IN DISCOVERY WHICH HAVE NOT YET BEEN FURNISHED
THE DEFENSE, ALONG WITH A CLAIM OF EXECUTIVE PRIVILEGE BY
2 ATTORNEY GENERAL AS TO THESE DOCUMENTS AND INFORMATION. SOME OF
THESE MATERIALS ORIGINATED WITH FIVE DIFFERENT FOREIGN

DO NOT TYPE MESSAGE BELOW THIS LINE

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APPROVED BY

DRAFTED BY

DATE

ROOM

TELE EXT.

JAM/CLS {73}

3/20/79

4634/5

- 1 - MR. J. B. ADAMS
- 1 - MR. J. J. McDERMOTT
- 1 - MR. J. A. MINTZ
- 1 - MR. H. N. BASSETT
- 1 - MR. W. O. CREGAR

{ATTN: PAUL DALY}

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JR.

235726
MAR 21 1979~~CONFIDENTIAL~~

53 JUN 13 1979

DO NOT FILE WITHOUT COMMUNICATIONS Greenberg/Gray-3017

FBI/DOJ

~~CONFIDENTIAL~~DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORMb1
b7D

PAGE

2

CONTINUATION SHEET

~~PAGE TWO DE HQ 0157 C O N F I D E N T I A L~~

(U) GOVERNMENTS AND RELATE TO SDS AND/OR WEATHERMAN INVESTIGATIVE

20 RESULTS. ~~SECRET~~18 IN CONNECTION WITH THE CLAIM OF PRIVILEGE, DEPARTMENT HAS
(U) REQUESTED FBI DETERMINE WHETHER THE FOREIGN GOVERNMENTS OBJECT16 TO THE RELEASE OF THEIR MATERIAL. ~~SECRET~~(U) FOR YOUR INFORMATION DEFENSE COUNSEL AND DEFENDANTS HAVE
14 CLEARANCE FOR MATERIAL UP TO AND INCLUDING SCI. ~~SECRET~~12 YOUR SOURCES SHOULD BE ADVISED THAT THE ITEMS FURNISHED
(U) BY THEM WILL BE SPECIFICALLY IDENTIFIED IF THEY DESIRE TO(U) REVIEW SAME FOR POSSIBLE DISCLOSURE TO THE DEFENSE. ~~SECRET~~10 THE FOREIGN AGENCIES WHICH FURNISHED THE PERTINENT
DOCUMENTS HAVE BEEN IDENTIFIED AS [REDACTED]

8 [REDACTED]

[REDACTED]

6 [REDACTED] [REDACTED]

(C)

[REDACTED] ~~SECRET~~4 HANDLE PROMPTLY. SUTEL BY AM OF MARCH 22, 1979. CONTACT
WITH AUTHORITATIVE SPOKESMAN IS DESIRED, BUT CONTACT SHOULD NOT
2 BE DELAYED TO ACHIEVE IDEAL HIGH LEVEL CONTACT. (U)~~C&E 1979, REASON 2, DRD MARCH 30, 1979.~~

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Greenberg/Gray-3018

FBI/DOJ

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 3

CONTINUATION SHEET

START HERE

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DO NOT TYPE MESSAGE BELOW THIS LINE

Greenberg/Gray-3019

FBI/DOJ

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

Teletype to Ottawa, Mexico City, Hong Kong, Tokyo
Re: U.S. Vs. L. Patrick Gray III, Et Al; Discovery Proceedings

NOTE:

Coordinated with SA Paul V. Daly, Defense Discovery Special,
Records Management Division. Restatements requested March One Nine,
Last, by Frank Martin, Trial Attorney, after conferring with
Robert Keuch, Deputy Assistant Attorney General.

DTG
R14

APPROVED: *MB*
Director *[Signature]*
Assoc. Dir. *[Signature]*
Dep. AD Adm. *[Signature]*
Dep. AD Inv. *[Signature]*
Adm. Serv. *[Signature]*
Crim. Inv. *[Signature]*
Ident. *[Signature]*
Intell. *[Signature]*
Laboratory *[Signature]*
Legal Coun. *[Signature]*
Plan. & Insp. *[Signature]*
Rec. Mgnt. *[Signature]*
Tech. Servs. *[Signature]*
Training *[Signature]*
Public Affs. Off. *[Signature]*

Read to Frank Martin
USDT and he approved
of the content of teletype
pru

~~CONFIDENTIAL~~

0 210215Z MAR 79

21 MAR 79 03 14z

FM HONG KONG

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FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

TO DIRECTOR IMMEDIATE 060-20

BT

~~CONFIDENTIAL~~

UNITED STATES VERSUS L. PATRICK GRAY, III, ET AL; DISCOVERY
PROCEEDINGS.

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Crim. Inv.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Sec'y

REBUTEL, MARCH 20, 1979.

CANNOT MAKE INTELLIGENT APPROACH TO [REDACTED]

b7D

[REDACTED],
WITHOUT KNOWING EXACTLY WHAT MATERIALS THE DEPARTMENT WISHES TO
RELEASE TO THE DEFENDANTS.

DESPITE CLEARANCES OF DEFENDANTS AND COUNSEL, AND THEIR
PRIOR POSITIONS IN FBI, [REDACTED] HAS PREVIOUSLY
EXPRESSED, IN WRITING, THAT HE WISHES EVEN THE MERE FACT OF
[REDACTED] FBI COOPERATION CONSIDERED CONFIDENTIAL, AND ALL INFORMATION
PROVIDED TO BE CONSIDERED AT LEAST CONFIDENTIAL OR OF A HIGHER
CLASSIFICATION, AND NOT TO BE RELEASED OUTSIDE OF THE FBI WITHOUT
[REDACTED] PRIOR APPROVAL.

b7D

REC-114

62-118045-182

11 JUN 12 1979

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 03-03-2009

4-118045-182

53 JUN 13 1979

Greenberg/Gray-3021

PAGE TWO ~~C O N F I D E N T I A L~~

THIS APPROVAL IS ROUTINELY OBTAINED IN CRIMINAL MATTERS,
AND IN SECURITY MATTERS FOR PASSAGE TO OTHER SECURITY SERVICES.
WHAT THE POSITION OF THE [] WOULD BE WITH RESPECT TO DISCLOSURE b7D
EX PARTE AND IN CAMERA IN THIS CASE IS NOT KNOWN, BUT LEGAT
BELIEVES IT WOULD DEPEND LARGELY ON THE NATURE OF THE MATERIAL.

LEGAT IS CERTAIN THAT WITHOUT INFORMING [] OF THE SPECIFIC
MATERIAL, THE [] WILL OBJECT TO RELEASE OF ANY REPEAT ANY b7D
MATERIAL PROVIDED BY IT.

LEGAT WILL POSTPONE CONTACT WITH [] ON THIS MATTER b7D
UNTIL FURTHER ADVISED BY HEADQUARTERS.

~~C&E BY 887, REASONS 1, 2 AND 3, DRD MARCH 21, 2009.~~

BT

~~CONFIDENTIAL~~
 DEPARTMENT OF JUSTICE
 FEDERAL BUREAU OF INVESTIGATION
 COMMUNICATION MESSAGE FORM

132

PAGE 1 OF 2

DATE

3/21/79

CLASSIFICATION

~~CONFIDENTIAL~~

PRECEDENCE

IMMEDIATE

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DECLASSIFICATION

AUTHORITY DERIVED FROM:

FBI AUTOMATIC DECLASSIFICATION GUIDE

EXEMPTION CODE 25X(6)

DATE 03-03-2009

START HERE

FM FM DIRECTOR, FBI

TO TO LEGAL ATTACHE, HONG KONG {IMMEDIATE}

BT

~~CONFIDENTIAL~~

UNITED STATES VS L. PATRICK GRAY III, ET AL; DISCOVERY

PROCEEDINGS.

RE HONG KONG TELETYPE, MARCH 21, 1979

INFORMATION SOUGHT TO BE USED IN CAPTIONED CRIMINAL PROSE-

CUTION IS OF A ROUTINE SECURITY NATURE AND CONSISTS OF

DO NOT TYPE PAST THIS LINE

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REC-114 62-118091-187

APPROVAL SOUGHT IS TO USE SECURITY MATTER

DO NOT TYPE MESSAGE BELOW THIS LINE

11 JUN 12 1979

APPROVED BY

WOLF

DRAFTED BY

JLT/CLS {4}

DATE

3/21/79

ROOM

4634/5

TELE EXT.

4691

- 1 - MR. H. N. BASSETT
{ATTN: PAUL DALY}
- 1 - MR. W. O. CREGAR
- 1 - MR. [REDACTED]

~~CONFIDENTIAL~~b6
b7cFEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION22307
MAR 21 1979

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED EXCEPT
 WHERE SHOWN OTHERWISE

53 JUN 13 1979

DO NOT FILE WITHOUT COMMUNICATIONS STAMP Greenberg/Gray-3023

FBI/DOJ

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM~~CONFIDENTIAL~~

PAGE 2

CONTINUATION SHEET

~~PAGE TWO DE HQ 0132 C O N F I D E N T I A L~~

INFORMATION IN A CRIMINAL PROSECUTION FOR DISCLOSURE TO
20 APPROPRIATELY CLEARED DEFENSE COUNSEL DURING DISCOVERY ONLY AND
18 NOT FOR USE IN A PUBLIC TRIAL.

~~C&E 1727, REASON 2, DRD MARCH 21, 1977.~~

16 BT

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DO NOT TYPE PAST THIS LINE

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Greenberg/Gray-3024

FBI/DOJ

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

b7D

Teletype to Hong Kong

Re: US Vs L. Patrick Gray III, Et Al; Discovery Proceedings

NOTE:

Referenced Hong Kong cable request clarification of instructions to contact [redacted] set forth in Bureau Teletype, March 20, 1979.

APPROVED:

Director _____
Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____

Adm. Serv. _____
Crim. Inv. _____
Ident. _____
Intell. WOL _____
Laboratory _____

Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____

*RSL
RM*

*Read by Frank Martin, 3/21/79, who
added end of last sentence
beginning "for disclosure"
to appropriately cleared...*
SK

Greenberg/Gray-3025

~~CONFIDENTIAL~~

~~CONFIDENTIAL~~

Assoc. Dir.	
Dep. AD Adm.	
Dep. AD Inv.	
Asst. Dir.:	
Adm. Serv.	
Crim. Inv.	
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Tech. Servs.	
Training	
Public Affs. Off.	
Telephone Rm.	
Director's Sec'y	

O 220520Z MAR 79

FM HONG KONG (197-1)

TO DIRECTOR IMMEDIATE

22 MAR 79 06 02z
663-21
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OF INVESTIGATION
COMMUNICATIONS SECTION

BT

~~CONFIDENTIAL~~

UNITED STATES VS. L. PATRICK GRAY, III; ET AL;
DISCOVERY PROCEEDINGS.

REBUTELS, MARCH 20 AND 21, 1979.

(U)

INFORMED MARCH 22, 1979: ~~(S)~~

(C)

CONSEQUENTLY, OBJECTS TO AND WILL NOT REPEAT WILL NOT APPROVE
RELEASE OF THAT INFORMATION OUTSIDE OF FBI FOR EX PARTE, IN
CAMERA REVIEW BY COURT AND/OR DEFENSE. ~~(S)~~.

~~C&E BY 887, REASONS 1, 2 AND 3, DRD MARCH 22, 2009.~~

11 JUN 12 1979

BT

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DATE 03-03-2009

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53 JUN 13 1979

~~CONFIDENTIAL~~

Greenberg/Gray-3026

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REC-114 62-118045-184

BUY

0 221700Z MAR 79

FM OTTAWA

TO DIRECTOR IMMEDIATE 078-22

BT

~~CONFIDENTIAL~~

22 MAR 79 1-R 10z

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OF INVESTIGATION
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Asst. Dir.	
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Asst. Dir.:	
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Telephone Rm.	
Director's Sec'y	

UNITED STATES VERSUS L. PATRICK GRAY III, ET AL; DISCOVERY
PROCEEDINGS

REBUTEL MARCH 20, 1979. RE LEGAT TELEPHONE CALL MARCH 22,
1979.

[REDACTED]
ADVISED ON MARCH 22, 1979, THAT [REDACTED] POLICY IS NOT TO AUTHORIZE
RELEASE OF THEIR DOCUMENTS AND INFORMATION AS IDENTIFIED IN
RETEL.

THEY BELIEVE THAT NO DOUBT THIS PRECEDENT SHOULD
BE CONTINUED IN THIS INSTANCE; HOWEVER, PRIOR TO GIVING A
DEFINITIVE ANSWER, THEY WOULD REQUIRE IDENTIFICATION OF [REDACTED]
MATERIAL IN QUESTION SO THAT IT COULD BE REVIEWED BY [REDACTED].

~~C&E 1453, REASON 1, DRD MARCH 22, 2009.~~

BT

REC-114

62-118 045-185

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FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 03-03-2009

11 JUN 12 1979

53 JUN 13 1979

cc - Legal Coun.

Greenberg/Gray-3027

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EXEMPTION CODE 25X(1,6)
DATE 03-03-2009

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Dep. AD Inv.	
Asst. Dir.:	
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Tech. Servs.	
Training	
Public Affs. Off.	
Telephone Rm.	
Director's Sec'y	

O 222020Z MAR 79

22 MAR 79 21 22z

FM MEXICO CITY 2P

TO DIRECTOR IMMEDIATE NR 164-22

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OF INVESTIGATION
COMMUNICATIONS SECTION

BT

~~CONFIDENTIAL~~

UNITED STATES VERSUS L. PATRICK GRAY, III; ET AL. DISCOVERY
PROCEEDINGS.

REBUTEL MARCH 20, 1979.

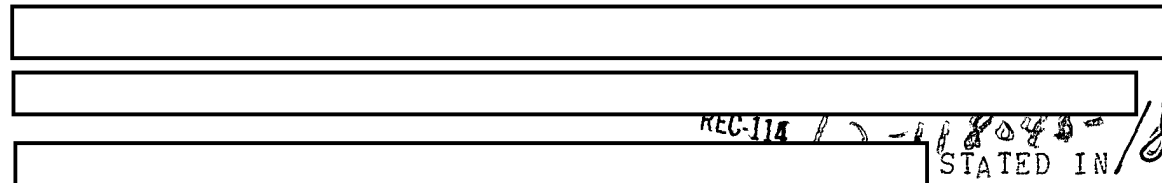
ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

(C)



[Handwritten signature]
b1

ON MARCH 22, 1979, CONTENTS OF REBUTEL WERE DISCUSSED WITH



REC-114 100-448040-186
STATED IN

UNEQUIVOCAL TERMS THAT [REDACTED] COULD NOT
COURTENANCE THE RELEASE OF MATERIAL RELATIVE TO CAPTIONED
MATTER WHICH ORIGINATED WITH [REDACTED] AND WAS
PREVIOUSLY PROVIDED TO THE OFFICE OF LEGAL ATTACHE, MEXICO
CITY, UNDER ANY CONDITIONS TO ANYONE OUTSIDE THE FBI.

END PAGE ONE

JUN 12 1979

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53 JUN 13 1979

~~CONFIDENTIAL~~

Greenberg/Gray-3028

~~CONFIDENTIAL~~

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b7D

PAGE TWO ~~CONFIDENTIAL~~

[] REQUESTED THAT HE BE ADVISED IN THE EVENT ANY ACTION
TAKES PLACE WHICH WOULD ALLOW THE RELEASE OF THE MATERIAL
OR WOULD DISCLOSE COOPERATION BY []

[] REITERATED THAT []

[] HE IS QUALIFIED TO ADDRESS THIS SUBJECT AND HE IS
AGAINST THE RELEASE OF MATERIAL WHICH ORIGINATED WITH THE
[] IN CAPTIONED MATTER.

~~CLASSIFIED AND EXTENDED BY 4938; REASON 2, DRD MARCH 22,~~

~~1999.~~

BT

~~CONFIDENTIAL~~

Greenberg/Gray-3029

[REDACTED] Deputy Special Coordinator, Special Coordinating Staff--
Taiwan, Bureau of East Asian and Pacific
Affairs, State Department, advised on
3-21-79:

The U. S. Government has no official
representation on Taiwan. Unofficial
representation in the form of the
American Institute in Taiwan is planned
but is not yet in operation because of
lack of funds. Therefore, the U. S.
Government has no way to approach author-
ities on Taiwan. Furthermore, the U. S.
Government has no official dealings with
authorities from Taiwan anywhere in the
world.

AKN

6588

OK to file
4-3-79

~~SECRET~~

0 220600Z MAR 79

FM TOKYO

TO DIRECTOR IMMEDIATE 081-21

BT

~~CONFIDENTIAL~~

22 MAR 79 07 32z

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OF INVESTIGATION
COMMUNICATIONS SECTION

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Dep. AD Adm.	
Dep. AD Inv.	
Asst. Dir.:	
Adm. Serv.	
Crim. Inv.	
Ident.	
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Legal Coun.	
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Tech. Servs.	
Training	
Public Affs. Off.	
Telephone Rm.	
Director's Sec'y	

UNITED STATES VERSUS L. PATRICK GRAY III, ET AL; DISCOVERY
PROCEEDINGS.

REBUCAB MARCH 20, 1979; TOKCABS MARCH 27 & 28, 1978, BUCAB
MARCH 24, 1978, CAPTIONED, "SUBCOMMITTEE ON INTERNATIONAL OPERATIONS;
SENATE COMMITTEE ON FOREIGN RELATIONS" FOREIGN LIAISON MATTER.

ENTIRE TEXT CLASSIFIED ~~CONFIDENTIAL~~.

ON MARCH 22, 1979, (MARCH 21 WAS JAPANESE HOLIDAY), [REDACTED]

[REDACTED]
[REDACTED] WAS CONTACTED AS RE-
QUESTED IN REBUCAB. DURING CONTACT IT WAS POINT OUT THAT [REDACTED]
CONSIDERS THE RELATIONSHIP BETWEEN THE FBI AND [REDACTED] TO BE CONFI-
DENTIAL AND ANY INFORMATION EXCHANGED IS CONSIDERED TO BE CONFI-
DENTIAL AND FOR FBI USE ONLY, PARTICULARLY IN MATTERS OF A SECURITY
NATURE. [REDACTED] ADVISED THAT WITHOUT FULL STUDY OF THIS MATTER

INCLUDING THE DETAILS OF THE CASE AND CONTENT OF THE DOCUMENTS IN
QUESTION THAT HE COULD NOT RESPOND AS TO WHETHER OR NOT [REDACTED] WAS AN
OBJECTION TO THE RELEASE OF DOCUMENTS OR INFORMATION FROM THE [REDACTED]

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 03-03-2009

REC-114 62-118045-187
JUN 12 1979

53 JUN 13 1979

~~SECRET~~

62-118045
Greenberg/Gray-3031

~~SECRET~~

PAGE TWO ~~CONFIDENTIAL~~

FOR EXAMINATION BY THE DEFENDANTS IN COURT PROCEEDINGS REFERRED TO IN REFERENCED COMMUNICATION.

IT IS NOTED THAT BY REFERENCED CABLE DATED 3/27/78, TOKYO RESPONDED TO REQUEST TO CONTACT [] ALONG SIMILAR LINES. AT THAT TIME THE [] REQUESTED THE RELATIONSHIP BETWEEN [] AND FBI BE KEPT CONFIDENTIAL AND FURTHER INDICATED IN PART THAT DATA IS PROVIDED THE FBI BY [] FOR INFORMATION ONLY. AT THAT TIME WHEN MATTER WAS THOROUGHLY DISCUSSED, [] DESIRED NO DISCLOSURES TO ANYONE OUTSIDE THE FBI. DURING THE 3/22/79 MEETING WITH [] A DESIRE TO MAINTAIN THE LONG STANDING CONFIDENTIAL RELATIONSHIP WAS EXPRESSED, ALSO A CONCERN THEREFORE WAS EXPRESSED. LEGAT TOKYO DOES NOT FEEL THIS STANCE WILL CHANGE. [] ADVISED HE WOULD STUDY MATTER BUT NEEDS TO SEE CONTENTS OF DOCUMENTS IN QUESTION BEFORE DECISION IS MADE.

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b7C
b7D

TOKYO FILES CONTAINING INFO ON SDS AND WEATHERMAN ARE LIMITED AND REVIEW OF SAME LOCATED NO INFORMATION FROM [] []

(S)

[]
[]

b1
b7D

IS NOT IN A POSITION TO MAKE A DECISION ALONG THE LINES DESIRED

~~SECRET~~

Greenberg/Gray-3032

~~SECRET~~

PAGE THREE ~~CONFIDENTIAL~~

IN REFERENCED CABLE. IN ORDER TO OBTAIN SUCH A DECISION SAME
WOULD HAVE TO BE HANDLED BY LETTER, (TELEPHONE INSECURE) OR
(S) THROUGH ASSISTANCE OF OSI, NISO [REDACTED]

(S)

b1

BUREAU IS REQUESTED TO ADVISE IF STATEMENTS BEYOND THOSE
SET OUT IN REFERENCED CABLES ARE NEEDED IN RESPONSE TO CURRENT
REQUEST. IF NOT, BUREAU IS REQUESTED TO SPECIFICALLY IDENTIFY
DOCUMENTS IN QUESTION AND FURNISH THEIR CONTENTS SO DECISION BY
AGENCIES INVOLVED CAN BE MADE.

ADMINISTRATIVE:

LEGAT TOKYO NOTES THAT CONTACT OF [REDACTED] ON 3/22/79, CAUSED SOME
CONCERN IN VIEW OF POTENTIAL POLITICAL RAMIFICATIONS AND QUESTIONS

b7D

~~SECRET~~

Greenberg/Gray-3033

~~SECRET~~

b7D

PAGE FOUR ~~CONFIDENTIAL~~

AS TO RELATIONSHIPS WITH FOREIGN AGENCIES. ALSO SOME CONCERN WAS EXPRESSED AS TO CONFIDENTIALITY BETWEEN FBI AND [REDACTED]. LEGAT POINTED OUT THAT BECAUSE OF THE BUREAU'S RECOGNITION OF THE EXISTING CONFIDENTIAL RELATIONSHIP THAT [REDACTED] WAS BEING CONTACTED AND ASKED SPECIFICALLY AS PERTAINS TO A PARTICULAR CASE IN VIEW OF THE DISCOVERY PROCEEDINGS AND ORDERS OF THE USDC JUDGE. THE EXPLANATION ASSURED [REDACTED] OF OUR DESIRE TO CONTINUE TO MAINTAIN THE CONFIDENTIAL RELATIONSHIP BUT FEARS EXIST THAT IF SUCH INFORMATION IS RELEASED FROM FBI CONTROL THAT THE CONFIDENTIAL NATURE OF SAME WILL NOT BE MAINTAINED. LEGAT TOKYO HOPES THAT IN VIEW OF THE REQUESTS FOR CONFIDENTIALITY WHICH WERE MADE IN MARCH, 1978, THAT SUCH CAN BE UTILIZED AS RESPONSE IN CURRENT MATTER AS WELL AS IN ANY FUTURE MATTERS OF AN IDENTICAL OR SIMILAR NATURE.

~~C AND E 1813; REASON 2, DRD MARCH 30, 1999.~~

BT

~~SECRET~~

Greenberg/Gray-3034

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : The Director

FROM : Legal Counsel *JAM*

SUBJECT: W. MARK FELT

DATE: 3/22/79

Asst. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
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Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
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Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

At 2:04 p. m., March 22nd, Mary Lawton, Office of Legal Counsel, Department of Justice, called me and said that Mark Felt had been briefed today regarding certain security information in order to grant him a security clearance in connection with the pending criminal prosecution. She said that following his briefing, Mr. Felt refused to sign the oath and said that his refusal was based on the fact that if he did so it would interfere with the publication of his book which contains information concerning the specific program involved in the briefing.

Ms. Lawton said that the Department is considering whether it is necessary to apply for an injunction against publication of the classified material in the book. For that purpose, she requested a copy of the employment secrecy agreement, if any, Mr. Felt may have signed while employed at the FBI.

Ms. Lawton also inquired as to whether anyone in the FBI has given Mr. Felt authorization to include classified material in his book.

RECOMMENDATIONS:

(1) That the Records Management Division furnish a copy of any employment agreement Mr. Felt may have signed to Ms. Lawton.

APPROVED: *WMA*

Director	Adm. Serv.	Legal Coun.
Assoc. Dir.	Crim. Inv.	Plan. & Insp.
Dep. AD Adm.	Ident.	Rec. Mgnt.
Dep. AD Inv.	Intell.	Tech. Servs.
	Laboratory	Training
		Public Affs. Off.

(2) That the Records Management Division advise Ms. Lawton whether Mr. Felt has been authorized by the Bureau to include in his book any classified information.

APPROVED: *WMA*

Director	Adm. Serv.	Legal Coun.
Assoc. Dir.	Crim. Inv.	Plan. & Insp.
Dep. AD Adm.	Ident.	Rec. Mgnt.
Dep. AD Inv.	Intell.	Tech. Servs.
	Laboratory	Training
		Public Affs. Off.

JAM:nls (7)

1 - Mr. Adams
1 - Mr. McDermott
1 - Mr. Bassett
1 - Mr. Cregan
1 - Mr. Long
1 - Mr. Mintz



55 JUN 13 1979 Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

62-118045

4-104 PD
9-104 PD
4
FBI/DOJ

~~SECRET~~

Assoc. Dir.	
Dep. Dir. Adm.	
Dep. Dir. Inv.	
Asst. Dir.:	
Adm. Serv.	
Crim. Inv.	
Ident.	
Intell.	
Lab.	
Legal Coun.	
Plan. & Insp.	
Rec. Mgmt.	
Tech. Serv.	
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Public Aff. Off.	
Telephone Rm.	
Director's Sec'y	

P 231400Z MAR 79

23 MAR 79 15 45z

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b6
b7C
b7D

FM PARIS

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

TO DIRECTOR PRIORITY 082-23

BT

~~SECRET~~

UNITED STATES VERSUS L. PATRICK GRAY III, ET AL.;
DISCOVERY PROCEEDINGS.

REBUCAB MARCH 22, 1979.

RELEASE OF INFORMATION ORIGINATING WITH [REDACTED]

[REDACTED] IN CAPTIONED MATTER

WAS DISCUSSED ON MARCH 23, 1979, WITH [REDACTED]

(S) ADVISED [REDACTED] TOTALLY OPPOSED TO INFORMATION CONCERNING [REDACTED]

BEING RELEASED TO DEFENDANTS AND DEFENSE COUNSEL.

~~C & E BY 2415; REASON (1); DRD MARCH 23, 2009.~~

BT

REC-114

62-118045-189

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(6)
DATE 03-03-2009

11 JUN 12 1979

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Q - Holy P

53 JUN 13 1979

~~SECRET~~

Greenberg/Gray-3036

UNITED STATES GOVERNMENT

MemorandumUNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____
 Asst. Dir.:
 Adm. Servs. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____
 Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____
 Telephone Rm. _____
 Director's Sec'y _____

TO : Mr. Bassett *HB*

FROM : Mr. Daly *pd*
W. Marks

SUBJECT: U. S. vs. Felt et al.

DATE: 3/27/79

PURPOSE: The purpose of this memorandum is to secure approval for two affidavits to be signed by the writer and submitted to the court in this matter.

RECOMMENDATION: That attached affidavits be executed and furnished the Department.

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED
 DATE 03-03-2009 BY 65179 dmh/baw/sbs

APPROVED: *W*

Director _____
 Assoc. Dir. _____
 Dep. AD Adm. _____
 Dep. AD Inv. _____

Adm. Serv. _____
 Crim. Inv. _____
 Ident. _____
 Intell. _____
 Laboratory _____

Legal Coun. _____
 Plan. & Insp. _____
 Rec. Mgnt. _____
 Tech. Servs. _____
 Training _____
 Public Affs. Off. _____

ENC. BEHIND FILE

4-ENCLOSURE
Enclosures (2)

- 1 - Mr. Adams
- 1 - Mr. McDermott
- 1 - Mr. Steel
- 1 - Mr. Cregar
- 1 - Mr. Mintz
- 1 - Mr. Bassett
- 1 - Mr. Daly

PVD:jeg (8)

Continued on Page Two

Greenberg/Gray-3037



Memorandum from Mr. Daly to Mr. Bassett
Re: U. S. vs. Felt et al.

DETAILS: Francis J. Martin of the FBI Task Force U. S. Department of Justice requested two affidavits be prepared for submission to the court pertaining to certain discoverable information in our possession originating with foreign police and intelligence services. The affidavits are to be submitted in connection with the proposed claim of privilege by the Attorney General.

The information prompting the submission of these affidavits pertains to foreign direction, collaboration and contacts by the Weathermen and their associates. An effort was made in each instance to find parallel information which did not originate with a foreign police or foreign intelligence service. While this was generally successful there were six instances where parallel information could not be located. We also, at the request of the Department contacted all the foreign governments with one exception. The governments responded through our legats denying permission to release of the information to the defense. Two of the governments conditioned their response by stating they would be willing to review the documents in question and give a definitive answer. Absent such a review both governments requested the material not be released. We have forwarded the documents to those governments through the appropriate legat. Mr. Martin, who has reviewed the documents in question and is aware as to the details of their responses, has elected not to wait for any change in those two governments' response and to go forward with the affidavits. The one instance where contact could not be made involved [REDACTED] In view of this Government's current lack of diplomatic relations with that country, State Department requested we not contact them. Martin is fully cognizant of this problem.

The attached affidavits were discussed in detail with Mr. Martin and his associate Lubomyr M. Jachnycky. Both stated that as to style and content they met with their approval.

~~SECRET~~

62-118045-190
ENCLOSURE

Greenberg/Gray-3039

● ~~SECRET~~ ●

3/29/79

Paul V. Daly
Federal Bureau of Investigation

ARREST CHECK
WITNESS LIST

FEDERAL GOVERNMENT

Frank Martin
Department of Justice

W. Mark Felt

Pursuant to your request, the below-listed present and past employees of the Federal Bureau of Investigation (FBI) were searched in the records of the Identification Division, FBI. No arrest record for any of these individuals was located.

Adams, James B.

Branigan, William
Conrad, Ivan W.

Kitchens, Thomas W. Jr.
LaPrade, J. Wallace
Mack, Paul L.
Moore, Donald W. Jr.

Bishop, Thomas E.
Cleveland, William V.
Decker, Andrew J.
Hoxie, Herbert E.

Shackleford, Robert L.

Sullivan, William A.

Young, Paul C.

1 - ENCLOSURE

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.: _____
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
Intell. _____
Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

JLT:bas

(3)bas

REC-114

JUN 12 1979

Greenberg/Gray-3055

JENCKS, GRADY INVENTORY

* Adams, James B. 12-21-26 3501
 302 10/13/76 (A)
 office interview 7/11/77 Birthday (B)
 office interview 5/9/78 Check! (C)

* [redacted] 3502 b3
 302 7/15/77 (A) b6
 office interview 8/11/76 4 civil (B) b7C
 [redacted] (C)

* [redacted] 3503 b3
 office interview (3) Sept 76 (A-C) b6
 [redacted] 2 civil (D) b7C
 [redacted] (E)
 WDC - 3/9/78 (F)
 Stmt, admin. Procedures 10/5/78 (G)

* [redacted] 3504 b3
 [redacted] 2 CIVIL (A)

* Branigan, William 7-25-76 3505
 office interview 8/25/77 1 civil (A)

* [redacted] 3506 b3
 [redacted] 2 civil (A)

* [redacted] 3507 b3
 [redacted] NO civil (A)

* [redacted] 3508 b3
 office interview 10/13/76 (A)
 [redacted] 2 civil (B)
 [redacted] 7/23/78 (C)

* [redacted] 3509 b3
 office interview 10/8/76 (A) b6
 office interview 2/6/78 3 civil (B) b7C
 [redacted] (C)
 [redacted] (D)
 [redacted] (E)

** [redacted] 3510 b3
 [redacted] NO civil (A)
 [redacted] (B)

* [redacted] 3511 b3
 [redacted] 2 civil (A)

ALL INFORMATION CONTAINED
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 DATE 03-03-2009 BY 65179 dmh/baw/sbs

62-118045-191
 ENCLOSURE Greenberg/Gray-3056

* [redacted] *1 civil* 3512 b6
office interview - 4/24/78 (A) b7C

* [redacted] *no civil* 3513 b3
office interview transcript *no civil*
8/20/76 (A)
[redacted] (B)
office interview 12/7/77 AM (C)
office interview transcript
12/7/77 PB (D)
[redacted] (E)

* [redacted] *no civil* 3514 b6
302 - 11/8/76, 6/28/77 (A-B) b7C
office interview 1/12/78 (C)

* Mack, Paul L. *10-1-25 civil* 3515
office interview 7/12/77; 2/2/78 (A-B)

** [redacted] *no civil* 3516 b3
[redacted] (A) b6
[redacted] (A) b7C

* [redacted] *1 civil* 3517 b3
[redacted] (A)
302 8

* [redacted] *1 civil* 3518 b6
office interview 1/18/78 (A) b7C

* [redacted] *3 civil* 3519 b3
office interview 8/18/76 (A) b6
[redacted] (B) b7C

* [redacted] *no civil* 3520 b3
office interview 11/22/76 *no civil* (A) b6
office interview 2/22/78 (B) b7C
[redacted] (C)

* [redacted] *no civil* 3521 b6
office interview 2/28/78 (A) b7C

* [redacted] *no civil* 3522 b3
[redacted] (A) b6
[redacted] b7C

* [redacted] *1 civil* 3523
302 10/1/76 (A) b3
office interviews (2) (B-C) b6
[redacted] (D) b7C

302 - 8/24/76
302 - 10/26/76
office interview 8/27/76

3524 b3
(A)
(B)
(C)
(D)
(E)
(F)

office interview 9/14/76

3525 b3
b6
b7C
(A)

office interview 3/15/78

3526 b3
b6
b7C
(A)
(B)

office interview - 1/10/78

3527 b3
b6
b7C
(A)
(B)

office interview 1/26/78

3528 b3
(A)

office interview 8/27/76

3529 b6
b7C
(A)

office interview 8/20/76

3530 b6
b7C
(A)

10/21/76

3531 b3
(A) b6
(B) b7C

302 9/7/76

3532
(A)
(B) b3
(C) b6
(D) b7C

office interview - 4/28/78

3533
(A) b3
(B) b6
(C) b7C

Waiver of Rights Forms:

LaPrade J. Wallace

3534(A)

(3513-F)
(3520-D) b6
b7C

Immunity Agreements:

[REDACTED]	(3503-G)
[REDACTED] (3/31/78)	(3522-B)
[REDACTED] (9/14/76)	(3526-C)
[REDACTED]	(3527-C)
[REDACTED] (8/27/76)	(3531-C)
[REDACTED]	(3532-E)
[REDACTED]	(3533-D)

*duplicate names
on this sheet*

* No arrest record on basis of Bureau personnel fingerprints filed in criminal file & former Bureau personnel fingerprints retrieved from civil file and researched against criminal file.

** Unable to identify with arrest record on the basis of information furnished. This is a name check only. No fingerprints located criminal or civil files.

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Assoc. Dir. 5
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir.:
Adm. Servs. _____
Crim. Inv. _____
Ident. _____
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Laboratory _____
Legal Coun. _____
Plan. & Insp. _____
Rec. Mgnt. _____
Tech. Servs. _____
Training _____
Public Affs. Off. _____
Telephone Rm. _____
Director's Sec'y _____

TO : [redacted]

DATE: 3/30/79

FROM : *DeKl. BS*
[redacted]

b6
b7C

1 - [redacted]
(Attn: [redacted])
1 - [redacted]

b6
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C^{sr}
SUBJECT: EDWARD S. MILLER
DOCUMENTS ORIGINATED MORE THAN
TWENTY YEARS AGO INVOLVING
CLASSIFIED INFORMATION

W. Mark Felt

FBI documents containing classified information and originated more than twenty years ago have been denied the requester. These documents are listed in an appeal addendum, a copy of which is attached along with the staff comments of the Department Review Committee (DRC).

Prior to presentation to the DRC the FBI declassified page 1 of documents 1 and 2, brackets at bottom; document 3, page 1, brackets at bottom (except stenographic reference), and page 2, paragraph 7; document 4, page 1, brackets at bottom (except stenographic reference) and page 2, paragraph 6 (except information in brackets); document 5, page 1, brackets at bottom (except stenographic reference).

The remaining documents were presented to the DRC on 2/7/79, at which time the DRC unanimously determined that the 20-year old material is within the purview of the Attorney General's prior decisions on such material and classification was upheld.

Action: Disclosure Section should review this request in line with the above decision and insure that all appropriate material is processed for release to the requester.

Enclosure/- **ENCLOSURE**

REC-114 62-118045-192

JUN 12 1979

acg
ACG:jmh
(3)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 03-03-2009 BY 65179 dmh/baw/sbs

Greenberg/Gray-3060

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5 JUN 13 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

NAME: F.B.I. Personnel File of Edward S. Miller, 67-45111	COMPONENT: FBI
ADDRESS:	DRC #:
	FOIPA #:

DOCUMENTS INVOLVED AND COMPONENT'S POSITION: *

SEE ATTACHMENTS

Greenberg/Gray-3061

STAFF COMMENTS: * The documents in this case, which are over 20-years old, are the subject of a discovery request in criminal litigation.

The Committee should review document 3, page 1, bracketed information, and page 2, paragraph 7 (representative) and document 6, page 1, bracketed information (representative) to determine whether continued classification is warranted. The remaining information appears to be appropriately characterized by the F.B.I., as it concerns intelligence activities, sources or methods, the release of which would cause at least identifiable damage to the national security. The classification of this material has been coordinated with another government agency having a direct interest in the subject matter.

(Continued on next page....)

DECISION OF THE REVIEW COMMITTEE:

1. DECLASSIFY: Page 1 of documents 1 and 2, brackets at bottom; document 3, p. 1, brackets at bottom (except stenographic reference), and p. 2, paragraph 7; document 4, p. 1, brackets at bottom (cont. next pg.)...
2. UPHOLD CLASSIFICATION: All documents listed per attachment, except as noted above.
3. CONSULT WITH:
4. REGRADE TO:
5. OTHER: The Committee determined that application of the "balancing test" was not appropriate.
6. COMMENTS: The Committee unanimously determined that the 20-year old classified information is within the purview of the Attorney General's prior decisions on such information.

DATE OF MEETING: February 7, 1979

CHAIRMAN: Robert Keuch

* THIS PORTION SHOULD BE UNCLASSIFIED IF POSSIBLE - IF NOT, USE CLASSIFIED ATTACHMENT. USE SUPPLEMENTAL PAGES IF THIS SPACE IS INADEQUATE.

Edward S. Miller (continued from p. 1)

STAFF COMMENTS:

In view of the fact that this information may directly impinge on a pending criminal matter, and may, therefore, affect either the rights of the defendants or the government's ability to conduct a successful prosecution, or both, the staff recommends that the Committee consider whether application of the "balancing test" is appropriate.

DECISION OF THE REVIEW COMMITTEE:

1. DECLASSIFY: (except stenographic reference) and p. 2, paragraph 6 (except information in brackets); document 5, page 1, brackets at bottom (except stenographic reference).

QUESTER:

PAGE

FBI records have been reviewed and the following portions of documents listed have been classified:

DOCUMENT DESCRIPTION	PAGE	PARAGRAPH	CLASSIFICATION	EXTENSION REFERENCE FCIM, II, 1-2.4.2
Document #1 Memorandum from re. Dean Garza's Allegation, Feb Letter 4/1/56	1	all bracket info top and bottom	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	2 thru 8	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	1 thru 6	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	7	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	3	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
Document #2 Letter from SAC, re. Garza's page 1, 3, 5 Letter 10/13/56	1	all bracket info top, 3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	1, 2, 4, 5	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	all bracket info bottom	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____

FBI records have been reviewed and the following portions of documents listed have been classified:

DOCUMENT DESCRIPTION	PAGE	PARAGRAPH	CLASSIFICATION	EXTENSION REFERENCE FCIM, II, 1-2.4.2
	2	1, 2, 4, 5	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	3	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	3	1, 3	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	3	2, 4	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
document # 3 letter from SAC, in forwarding to getters, etc. dated 2/18/57	1	all bracket info top and bottom except subject	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	Subject, 1, 2, 3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	4, 5	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	all bracket info top, 7	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	1 thru 4, 6	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____

FBI records have been reviewed and the following portions of documents listed have been classified:

DOCUMENT DESCRIPTION	PAGE	PARAGRAPH	CLASSIFICATION	EXTENSION REFERENCE FCIM, II, 1-2.4.2
	2	5	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
Document # 4 Letter from GAO re: 12/20/57 dated 6/18/57	1	all bracket info top secret 1 thru 5	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	Subject 1 thru 5	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	6	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	1 thru 3	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	3 thru 6	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
Document # 5 Letter from GAO re: financial data from 1/1/57	1	all bracket info top 1, 3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	2, 4, 5	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	all bracket info top	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____

FBI records have been reviewed and the following portions of documents listed have been classified:

DOCUMENT DESCRIPTION	PAGE	PARAGRAPH	CLASSIFICATION	EXTENSION REFERENCE FCIM, II, 1-2.4.2
	2	all bracket info top 2, 4	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	2	1, 3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
document # 6 the turn super in letters, p. 5 n, Sup. Instructions dated 3/5/53	1	all bracket info top am bottom, 5	<input checked="" type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	1, 2, 3	<input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
	1	4	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
document # 7 2 and 2.4 of memo on SAC, San Francisco Director, FBI dated 6/9/53	1	3	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
document # 8 2 and 2.4 of memo on SAC, San Francisco Director, FBI	1	3	<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input checked="" type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
			<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
			<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____
			<input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret	(1) _____ (2) _____ (3) _____ Other _____

LAW OFFICES
LEONARD, COHEN, GETTINGS AND SHER

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WASHINGTON, D. C. 20006
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COURTHOUSE SQUARE
ARLINGTON, VIRGINIA 22216
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JERRARD LEONARD
HARRY B. COHEN
ROBERT P. GETTINGS
LEONARD E. SHER
WILLIAM L. STAUFFER, JR.
JOANNE F. ALPER
JAMES T. DEVINE
FRANK W. DUNHAM, JR.
MARK D. CUMMINGS
MEMBER VIRGINIA BAR ONLY

~~SECRET~~

April 2, 1979

OUTSIDE SOURCE

Honorable William B. Bryant
United States District Judge
United States District Court
Washington, D.C. 20530

EXEMPTED FROM AUTOMATIC
DECLASSIFICATION
AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
EXEMPTION CODE 25X(1)
DATE 03-03-2009

Re: United States v. W. Mark Felt, et al.

Dear Judge Bryant:

This responds to Francis J. Martin's two letters to you dated March 30, 1979, one not under seal and the second under seal. In the unsealed letter, Mr. Martin asserts that "the government has completed its discovery". We believe that assertion to be incorrect and that other assertions contained in that letter are most misleading. We are presently reviewing our records and certain documents we received only Friday, March 30, 1979 in order to document a Motion to Dismiss for Failure to Comply with Court-Ordered Discovery. We expect to file this motion no later than Friday, April 6, 1979. The areas in which we presently believe the government's response to the Court's order to be incomplete are as follows:

1. The government has failed to provide the defense with access to at least 500 documents from foreign governments relating to the foreign travel and contacts of members of the Weatherman Underground Organization (WUO) and their collaboration with agents of foreign powers which were received by the FBI and/or contained in the files of the FBI during the time period relevant to the indictment; REC-114 62-118045-193
2. The government has failed to provide the defense with access to all documents generated by the National Security Agency, relating to the foreign connections of the WUO, and which were received by the FBI and/or contained in the files of the FBI during the time period relevant to the indictment; JUN 12 1979

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Greenberg/Gray-3067

~~SECRET~~

3 JUN 13 1979

62-118045

~~SECRET~~

Honorable William B. Bryant
April 2, 1979
Page Two

b6
b7c

3. The government has failed to provide the defense with documents relating to surreptitious entries other than those charged in the indictment which took place during the period of the indictment; [redacted] PO CC PD Waterworks Palmetto 73
4. The government has exceeded the authority to protect pending investigations and intelligence sources and methods granted in the Protective Order of December 22, 1978 by totally withholding documents falling within the scope of the Court's discovery order containing such information rather than by providing such documents to defense counsel with appropriate redactions; routine
5. The government has withheld production of documents tending to show Presidential and Attorney General approval of the use of surreptitious entries; all found
6. The government has withheld production of innumerable relevant documents generated by the Department of Justice in response to or inviting relevant FBI documents that have been produced to the defense; Do not Prod stuff memo
7. The government has failed to provide the defense with a quantity of documents furnished the Department of Justice by the FBI specifically to be turned over to the defense in this case; true
8. The government has failed to provide the defense with documents falling within the Court's discovery order specifically designated, described, and requested by the defense; Dept true Cf #3 b1
(S) eg - NY [redacted] file, ordered SE after 6/6/7
9. The government has failed to provide the defense with access to innumerable "other copies" of documents from the 1537 lost and destroyed "tickler" files from the IS-2 Section of the Domestic Intelligence Division; which the government has previously maintained as being readily available in the main bureau files; do not say
10. Access to documents is being improperly restricted. Defense counsel is being forced to review documents in the vault that are not classified SCI. These documents should have been turned over to the defense. Dept true

~~SECRET~~

Greenberg/Gray-3068

~~SECRET~~

Honorable William B. Bryant
April 2, 1979
Page Three

With respect to the sealed letter, we wish to register herein strong objection to any ex parte presentation to the Court by the government of its position on any issue in this case. We have not sought such privilege on behalf of Mr. Felt for any reason at any stage of the proceedings thus far and we believe such ex parte practice, when unconsented to by opposing counsel, to be totally foreign to legitimate procedure in a criminal case. On April 6, 1979, when we submit our motion to dismiss on the discovery issue, we also intend to submit a memorandum in support of the objection we here raise to ex parte proceedings. We respectfully request that the Court conduct no in camera and/or ex parte proceedings in connection with the matters raised in the sealed letter from Frank Martin of March 30, 1979 until we have had an opportunity to be heard on the propriety of proceeding in such manner.

We would deeply appreciate your Honor allowing us until Friday to present the above papers to the Court. We have no objection to allowing the government a reasonable time to respond with a hearing at a time thereafter of mutual convenience to the Court and counsel. If there is any problem with proceeding as outlined above, we respectfully request that we be so advised.

Very truly yours,

Brian P. Gettings

Brian P. Gettings

cc: Francis J. Martin, Esquire
Thomas A. Kennelly, Esquire
Alan I. Baron, Esquire

~~SECRET~~

Greenberg/Gray-3069

UNITED STATES GOVERNMENT

Memorandum

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DATE 03-03-2009 BY 65179 dmh/baw/sbs

TO : William H. Webster, Director
Federal Bureau of Investigation

DATE: April 23, 1979
PBH:FJM:ams

FROM : Philip B. Heymann
Assistant Attorney General
Criminal Division

File No. 177-16-33

SUBJECT: Unauthorized Disclosure of Classified Information

L. Patrick Gray
Reference is made to your memorandum of February 14, 1979, regarding the unauthorized disclosure of classified materials. Please provide copies of the following documents, which will be of assistance in making a full reply to the issues you have raised.

1. Director to Assistant Attorney General, Civil Rights Division; 6/22/76; classification procedures
2. Assistant Attorney General, Civil Rights Division to Director; 6/25/76; clearances for attorneys
3. Director to Attorney General; 6/29/76; outlined clearance procedures for defense attorneys
4. Director to Assistant Attorney General, Civil Rights Division; 7/26/76; expressed concern over protection of classified national security information
5. 6/22/78; interview with Dick Long
6. Director to Attorney General; 9/3/76; requesting [redacted]
7. Assistant Attorney General to Director; 9/7/76 forwarding [redacted]

EXP. PROC.
34 MAY 2 1979

ORIGINAL FILED IN 62-118045-29

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NOT RECORDED

167 JUN 13 1979

23 MAY 1 1979

Greenberg/Gray-3070



5010-110

3 JUN 13 1979

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

SHH

8. Deputy Associate Director to Skolnik; 2/10/78 or 2/6/78; classification of Grand Jury materials.

9. Deputy Associate Director to Benjamin R. Civiletti; 4/24/78; redaction of discovery documents.

10. FBI, Security Officer to Department of Justice Security Officer; 5/5/78; re: unmarked, classified FBI material in Task Force possession.

11. Deputy Associate Director to Deputy Assistant Attorney General, Criminal Division; 5/19/78; SCI information in Task Force possession.

~~CONFIDENTIAL~~

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS
WASHINGTON, DC 20314



7 JUN 1979

REPLY TO
ATTN OF: DADF

SUBJECT: United States v. L. Patrick Gray III, et al Defense Discovery

TO: Federal Bureau of Investigation
Special Office for Defense Discovery
Room 6888, Hoover Building
Attn: Mr. Brennan
Washington DC 20535

Jim Brennan

1. We have reviewed the AFOSI information contained in the attached documents and have declassified it in accordance with current Air Force directives. We have bracketed in red that information which "(c) release would constitute undue embarrassment or damage to unrelated third parties," and in black we have bracketed information under "(b) for protection of informants or sources."

2. Should you require further assistance regarding this matter, please contact, Doris Mattingly, 693-6650.

Roger D. Cook

ROGER D. COOK
Colonel, USAF
Vice Commander

1 Atch
FBI Discovery Documents

*attached copy expired
and returned by Air Force
JCB*

62-118045

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When Atch Nr 1 is (are) withdrawn
or not attached, the classification of
~~Confidential~~ on this correspondence
will be cancelled in accordance with AFR 205-1

~~CONFIDENTIAL~~

FOUR

LAW OFFICES

Diuguid, Siegel & Kennelly
One Thousand Connecticut Avenue, N.W.

Suite 1112

Washington, D. C. 20036

(202) 872-0700

April 3, 1979

JOHN P. DIUGUID**
THOMAS L. SIEGEL*
THOMAS A. KENNELLY*

KARL W. PILGER*
ELIZABETH J. WILLIAMS**

*D.C.

*MD.

OUTSIDE SOURCE

OF COUNSEL
HOWARD S. EPSTEIN*

MARYLAND OFFICES

107 W. JEFFERSON ST.
ROCKVILLE, MD. 20850

3737 BRANCH AVENUE
HILLCREST HEIGHTS,
MARYLAND 20031

5
C
The Honorable William B. Bryant
Chief Judge
United States District Court
for the District of Columbia
U. S. District Courthouse
Washington, D. C. 20530
L. Patrick O

Re: United States v. Gray, et al.
Criminal No. 78-179

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DATE 03-03-2009 BY 65179 dmh/baw/sbs

Dear Judge Bryant:

On behalf of Mr. Miller, we have now carefully examined the documents which the government has turned over since the hearing on March 15th. These consist of:

- Approximately 37 FBI documents containing information from the CIA
- Approximately 12 FBI documents containing Sensitive Compartmented Information
- Approximately 25 documents from the White House (National Security Council and the President's Foreign Intelligence Advisory Board)
- Approximately 150 FBI documents containing information from the Bureau's own sources

REC-114 62-118045

194
11 JUN 12 1979

We wish to inform the Court that the government has not provided us with any documents from the National Security Agency nor any documents from foreign intelligence sources concerning foreign connections or foreign collaboration by the Weatherman organization. We understand that the volume in these two categories is upwards of 500 documents.

62-118045
ENC. BEHIND FILE

8- ENCLOSURE

53 JUN 13 1979

4 - Mary P
Greenberg/Gray-3073

The Honorable William B. Bryant
April 3, 1979
Page Two

These are the very documents which are at the heart of our continuing controversy with the government. All of them were in the files of the Intelligence Division of the FBI at the time Mr. Miller headed that division. They are still in the FBI files.

These are the same documents which the Court ordered turned over to us at the chambers conference on February 22nd and in open court on March 15th.

In view of this development, or rather lack of development, a motion to dismiss the indictment would now seem to be in order. Attached hereto is a copy of the motion we have filed today.

We also take issue with the government's proposed intent to assert a State Secrets privilege and to make ex parte and in camera submissions in the discovery process. The government previously made such attempts in connection with its proposed Supplementary Protective Order which the Court rejected. It is well recognized that a State Secrets privilege is not available in criminal prosecutions, United States v. Andolschek, 142 F.2d 503 (2nd Cir. 1944), and that ex parte proceedings are to be avoided in resolving discovery issues, Alderman v. United States, 394 U.S. 165, 180-185 (1969).^{1/}

We see no value in permitting the government to continue to avoid its discovery obligations by once more raising these arguments.

^{1/} More detailed discussions of these issues have been previously submitted in "Defendant Miller's Objections to Proposed Supplementary Protective Order" (pp. 7-9) and "Memorandum of Defendant, L. Patrick Gray, III, in Response to Government's Motions in Limine" (pp. 14-23).

Diuguid, Siegel & Kennelly

The Honorable William B. Bryant
April 3, 1979
Page Three

We believe the Court's instructions to the government on March 15th were clear and unequivocal. We think the government cannot deny that it has failed to comply. We therefore urge that a dismissal of the indictment at this time is fair and just.

Respectfully,

DIUGUID, SIEGEL & KENNELLY

By *Thomas A. Kennelly*
Thomas A. Kennelly

Howard S. Epstein
Howard S. Epstein

Attachment

cc: Francis J. Martin, Esquire
Alan I. Baron, Esquire
Brian P. Gettings, Esquire

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Greenberg/Gray 3076



62-118045-

F-2: 209(D)1-39; CCT; 10/2/78

209(B)1-29; PFIAB; 10/2/78

226; Huston Plan; 11/8/78

245A-V; Huston supplement; 11/20/78

F-3: 253(A)1-5; Intelligence Division redesignation;
1/30/78

F-4: 209(F)1-47; Keith; 11/2/78

2. This matter will be addressed separately prior to March 30.

3. Your list, submitted as Attachment A to Unresolved Pretrial Matters, and other lists for which you request explanations of redactions have been forwarded to the FBI for processing. Once discovery is completed we will orally advise you of the generic nature of the redacted material. While there is a large volume of material involved, please note that many redactions pertaining to foreign influence have been lifted in light of Judge Bryant's recent discovery order.

4. Mr. Sol Lindenbaum has been telephonically contacted and asserts that he never authorized any national security electronic surveillances. His involvement in the approval process for wiretap applications was limited to Title III requests. Mr. Lindenbaum further asserts that to his knowledge no Attorney General ever delegated this authority with respect to national security wiretaps between 1952 and 1975.

5. A copy of the Guidelines for Foreign Intelligence collection and Foreign Counterintelligence Investigations is enclosed herein as discovery document #316.

6. Copies of the specific documents you have requested have been, and are being made available as rapidly as possible. You are reminded that these are documents that you or your agents have previously seen during discovery and they are currently available to you at the Bureau. It is the government's position that discovery of these documents is complete. The government will continue to provide copies of specific documents as requested.

7. Copies of Grand Jury exhibits that are not known to have been previously furnished to you during discovery are attached hereto as discovery items [redacted].

b3

8. Requires no rational response.

9. See response to paragraph three.

10. You have previously been furnished a memorandum from [redacted] as discovery item #254A. [redacted] has indicated that the first time he ever received information (other than public source information) concerning the Bureau's utilization of bag jobs in Weatherman cases was the occasion in 1978 that is reflected in his memorandum. You should also be advised that no current or former Departmental employee is being represented by attorneys from the Civil Division in defense of the civil suit in New York. That decision is wholly unrelated to any issue of contemporaneous "knowledge" of bag jobs by Department of Justice personnel.

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b7c

11. With respect to the documents requested in your letters of March 1 and March 12, we can advise you that at least some of that material has already been provided in other discovery materials. In addition, some of the requested attachments are not discoverable. We are processing these materials expeditiously; those that are discoverable will be provided shortly.

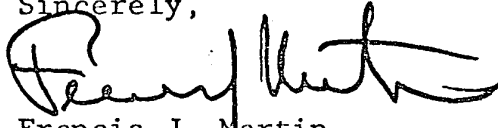
12. The documents referred to in the first paragraph of your March 20, 1979, letter are enclosed as are the requested inventories. As in our response to paragraph six, the documents you specifically request are not being treated as "unresolved discovery". The FBI has been provided with a copy of your letter; please note that documents not circled were not produced because of insufficient identifying data.

13. There are three attachments to discovery documents 186-195. Two of those attachments do not relate in any way to the subject matters of this case and are not discoverable. The third attachment, an IEC intelligence estimate on student demonstrations in 1971 is not believed to be discoverable because it does not pertain to the Weatherman. However, having undertaken to provide it, the document has been processed and is available to you for inspection at Mr. Daly's office.

14. The Government has no Jencks obligations with respect to participants at the dinner at Mr. Hoover's residence. Our Brady obligations have been fulfilled by our letter of May 17, 1978, wherein we notified you that you may wish to interview Messrs. Ehrlichman, Mitchell and Nixon.

15 and 16. We are prepared to work with you in an effort to arrive at factually-accurate stipulations concerning "Foreign Connections" and "Policies and Practices". To that end, we will be more than happy to make available documents that will assist in resolving factual disputes with respect to those issues. Such documents are unrelated to the government's discovery obligations. We will devote our full attention to these matters as soon as possible after March 30.

Sincerely,

A handwritten signature in dark ink, appearing to read "Francis J. Martin", written in a cursive style.

Francis J. Martin
Attorney
Criminal Division

LAW OFFICES
LEONARD, COHEN, GETTINGS AND SHER

JERRIS LEONARD
HARVEY B. COHEN
BRIAN P. GETTINGS
DAVID E. SHER
WILLIAM L. STAUFFER, JR.
JOANNE F. ALPER
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(703) 525-2260

OF COUNSEL
GERRY LEVENBERG

February 6, 1979

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DATE 03-03-2009 BY 65179 dmh/baw/sbs

Francis J. Martin, Esquire
Criminal Division
Department of Justice
Washington, D.C. 20530

Barnet D. Skolnik, Esquire
Special Assistant United
States Attorney
6233 Slender Sky
Columbia, Maryland 21044

Re: United States v. W. Mark Felt, et al.

Gentlemen:

Enclosed are three Stipulations. The Stipulation on "Policies and Practices" deals with the past practices and procedures of the Department of Justice in dealing with surreptitious entries (warrantless) and warrantless electronic surveillance. The second concerns the 1972 terrorist surreptitious entries authorized by then Director L. Patrick Gray, III. The third enclosed Stipulation deals with the "foreign connections" of the Weather Underground.

We are doubtful that a trial mechanism can be devised which can both adequately protect national security and accord fairness to the rights of the defendant, Mr. Felt. The three Stipulations we have drafted represent our best effort to express in nonclassified form the facts which we believe could be established at trial through legally admissible evidence only if national security concerns, which you have alleged, were disregarded. Accordingly, we might be willing to accept, in lieu of live testimony and documentary evidence to the same effect, these three Stipulations enclosed herewith. If you are not even willing to entertain something along the lines of the enclosures, we will pursue the matter no further. On the other hand, if you believe our proposal has some degree of merit, please advise so we may begin serious discussion. It is our belief that there is nothing contained in the proposed Stipulation which does not have a basis in fact.

ATTACHMENT B

Greenberg/Gray-3081

LAW OFFICES
LEONARD, COHEN, GETTINGS AND SHER

SUITE 550
1700 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006

(202) 872-1095

March 21, 1979

JERRIS LEONARD
HARVEY B. COHEN
BRIAN P. GETTINGS
DAVID E. SHER
WILLIAM L. STAUFFER, JR.
JOANNE F. ALPER
JAMES T. DEVINE
FRANK W. DUNHAM, JR.
MARK D. CUMMINGS*
*MEMBER VIRGINIA BAR ONLY

VIRGINIA OFFICES
1400 NORTH UHLE STREET
COURTHOUSE SQUARE
ARLINGTON, VIRGINIA 22216
(703) 525-2260

Francis J. Martin, Esq.
Criminal Division
Department of Justice
Washington, D.C. 20530

Dear Frank:

Our meeting of 3/19/79 concerning purely logistical problems in providing information relating to the FBI's use of the surreptitious entry technique was helpful and your subsequent permission to examine certain FBI files seems to be a step in the right direction in our efforts to identify, quantify and qualify the use of the technique of surreptitious entry by the FBI in the past. We of course will not object if this aspect of discovery is not capable of being certified as complete by 3/30/79. Of course, we do not presume to speak for Mr. Kennelly or the Court and certainly do not intend to waive any discovery rights by agreeing not to protest if good-faith efforts leave this particular discovery avenue still open when the Court-imposed deadline is reached.

For your assistance, we here take the time to list other items of discovery which our records reflect as outstanding. We believe the completion of discovery on the following items should be accomplished before any certification is made to the Court that discovery in this case is complete:

1. Original formal discovery requests granted by the Court in its Memorandum and Order of August 17, 1978 to-wit: A. 14, C. 1, 2 and 4, F. 2-4. We recognize that you might consider your response to certain discovery requests of our co-defendants as responsive to these particular requests of Mr. Felt which were granted by the Court last summer but you have never so stated. If such be the case, please advise which documents already furnished are in response to which request as you have done for our co-defendants and whether you have completed your response to these particular requests of Mr. Felt.

2. Specifically, with regard to Felt discovery request C. 4, we call your attention to paragraph III of Defendant Felt's Statement re Unresolved Pre-trial Matters. We have not received any third

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ATTACHMENT C

Greenberg/Gray-3084

2.

With respect to the Stipulation on "Policies and Practice", if we were to agree we would not by so doing relinquish our outstanding discovery demand in this area. We would still want the right to discover documents relating to all instances where these techniques, as set forth in paragraphs 3 and 23 of the Stipulation, were used, who approved their use, why and so forth. We want to make a compilation of the number of times each technique was used and want to select out for comparison purposes as many examples of specific uses as we choose. We not only offer that we will make a good faith attempt not to select any examples that have classification problems, we guarantee that there will be none.

The Stipulations on "foreign connection" and the "1972 terrorist surreptitious entry", on the other hand, would terminate any need for further discovery in these areas with one caveat. With respect to the proffered Stipulation on the 1972 terrorist surreptitious entry we suggest this only if we can be assured that the facts concerning that event will be limited at trial to those contained in the Stipulation. If any additional facts or circumstances concerning the event are admitted, we renew our request for full discovery on this event and the right to fully explore it at trial.

The Stipulations enclosed herein have been drafted, in good faith, to avoid any reference to a classified national security matter. If we are wrong and these Stipulations do contain matters which should be protected as national security information, please advise forthwith.

Finally, our response to the motion in limine may well be contingent on your position concerning the Stipulations we have hereby tendered for your consideration. It is therefore imperative that we receive your reaction with regard to these Stipulations no later than noon on Thursday.

Sincerely,

LEONARD, COHEN, GETTINGS & SHER



Brian P. Gettings

BPG:evb

cc: U. S. District Judge

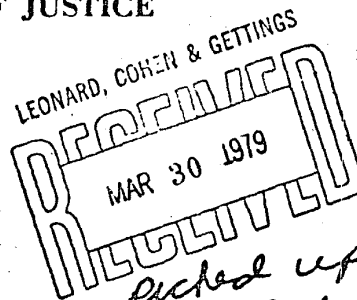


UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

FJM:ams



*Picked up
at Daley's
office per
3/30/79
phone call
from Martin's
office.*

Frank W. Dunham, Esquire
Leonard, Cohen, Gettings & Sher
Suite 550
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Frank,

This will respond to your letter of March 21 concerning certain incomplete "discovery" matters. I will cover them in the sequence raised in your letter.

1. For responses to formal discovery requests please refer to the following documents:

A-14: Nixon file search, F-1 through L-4; 10/2/78

Transcript of White House tape 2/16/78, conversation with Nixon, Ehrlichman and Gray; 8/24/78 (Mr. Baron, alone, agreed to conditions for release as set by counsel for Mr. Nixon.)

Documents by or for Nixon, Attorney General Mitchell, other White House staff regarding WUO. 230A-R; 11/16/78

Huston Plan, 226, 11/8/78

- C-1: It is our understanding that you have made arrangements with Mr. Daly regarding organizational charts.

- C-2: 5/25/78; The government made available approximately 450 volumes of WUO files.

11/14/78; A copy of Weatherman album listing 238 known Weathermen was provided with files not previously tendered to be made available upon request.

- C-4: 209(A)1-359; plans to deal with WUO, including "Foreign Influence in the New Left"; 10/27/78

246(B)1-8; DOJ file review; 12/28/78

ATTACHMENT D

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Greenberg/Gray-3086

LAW OFFICES

LEONARD, COHEN, GETTINGS AND SHER

Francis J. Martin, Esq.

March 21, 1979

Page Three

We believe that, in addition to the foregoing, the Court's recent ruling that the Barker-Martinez defense is available to Mr. Felt coupled with your earlier promise to provide Jencks & Brady materials 30 days in advance of trial, and considering the present posture of the case, combine to make the following items fall within the scope of materials that should be provided to us before any good-faith certification can be made to the District Court that discovery in this case is complete:

13. The attachments to documents 186-195 referred to in your 9/1/78 letter.

14. Jencks and/or Brady materials referred to in your letter transmitting documents 80A-85L re 1969 dinner at Mr. Hoover's residence attended by Ehrlichman, Mitchell, Nixon and Tolson during which Hoover told anecdotes about surreptitious entries.

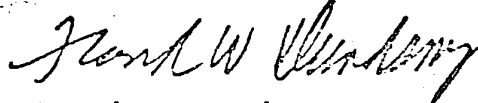
15. In addition to information concerning past specific uses of the technique of surreptitious entry, referred to in the opening paragraph of this letter and on which we are currently working together to pursue a suitable discovery solution, any other documents in the possession of the Department of Justice, including the FBI, which would tend to support in whole or in part any of the factual assertions contained in the Stipulation on Policies and Practices forwarded by our letter of 2/6/79.

16. In addition to the third agency documents referred to in paragraph (2) above, any documents or evidence in the possession of the government which would support the factual assertions contained in the Stipulation of Foreign Connections forwarded to you in our letter of 2/6/79.

We have gone to considerable effort to catalog for you here those items of discovery which we in good faith, upon a thorough review of our files, believe remain outstanding. We have set these forth as an aid to you in assuring that all materials you have intended to give us or are obligated to give us have been delivered.

Sincerely,

LEONARD, COHEN, GETTINGS & SHER



Frank W. Dunham, Jr.

FWD:kw

Greenberg/Gray-3087

2/

Request #8 was made in vacuo and should be disregarded. It was left over from our Chicken ~~case~~ case.

LAW OFFICES
LEONARD, COHEN, GETTINGS AND SHER

Francis J. Martin, Esq.
March 21, 1979
Page Two

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1/
agency documents concerning the foreign involvement, collaboration or travel of the Weathermen. Of course, we are aware that you need no reminder on this item since this particular area of discovery is causing the principle problem as a result of Judge Bryant's ruling on the Barker-Martinez defense.

3. You have promised us an explanation of redactions in any discovery documents for which we specifically request such explanation. Our list submitted as Attachment A to Defendant Felt's Statement re Unresolved Pre-trial Matters requesting an explanation of redactions in specifically identified documents has not been responded to.

4. Response to our letter dated 2/5/79 re approval of electronic surveillance in national security matters by Sol Lindenbaum or other DOJ personnel other than the Attorney General.

5. Information re guidelines past and present for obtaining executive approval of national security intelligence techniques referred to in our letter of 2/14/79.

6. 16 of the specific documents requested in our form listings of documents (#973-989).

7. Copies of the documents shown witnesses in their testimony before the Grand Jury requested in our letter of 2/23/79.

8. Everything that is handwritten we want typewritten (double spaced) and everything that is typewritten (single spaced) we want handwritten unless it is neither or xeroxed in which case we are entitled to both.2/

9. Documents requested and explanations of redactions referred to in our letter of 2/27/79.

10. Response to our request for materials per our letter of 2/28/79.

11. Requested documents per our letter of 3/1/79 supplemented by our letter of 3/12/79.

12. Documents and explanations of deletions of documents per our letter of 3/20/79.

Greenberg/Gray-3088

1/ By third agency we mean an agency of the U.S. government separate and apart from the Department of Justice and/or documents originating from foreign governments or foreign intelligence services.

Greenberg/Gray-3092

JUN 14 1979

TLW

6-14-79
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FOIPA
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